IN THE

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1884.

(Nos. 867 and 868.)

THE TOWN OF SHELDON,
Plaintiff in Error,

vs.

C. W. DAY,
Defendant in Error,

THE TOWN OF SHELDON,
Plaintiff in Error,

vs.

J. H. FAIRBANKS,
Defendant in Error.

Error to the Circuit Court of the United States, Northern District of Illinois.

Brief and Argument for Defendants in Error.

THOMAS S. McCLELLAND,

Of Counsel for Defendants in Error.

GEO. A. SANDERS,

Attorney for Day and Fairbanks.

CHICAGO:
HORACE O'DONOGHUE, BRIEF AND ABSTRACT PRINTER, 95-97 WASHINGTON ST.
1884.

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MOTION.

In each of these cases the court below made the writ of error a *supersedeas*, on filing cost bond in the sum of $1,000 by plaintiff in error. To this ruling in the lower court defendants in error objected.

When these causes shall be taken up for consideration, defendants in error desire that the question as to whether a writ of error can be made a *supersedeas*, except on condition of filing a bond in a penal sum sufficiently

large to cover amount of judgment appealed from, with costs and interest, as provided for in section 1,000 of the Revised Statutes of the United States, be passed upon and move the court to dismiss the writ of error, or vacate the order making the writ a *supersedeas*, because of the insufficiency of the bonds filed, or enter such order as may tend to establish a settled practice in this class of cases.

STATEMENT.

These two cases are so nearly identical that, for convenience of the court, I will treat them in the same brief. Both cases embrace the same issue of bonds. The facts agreed upon in the Fairbanks case were received as the facts in the Day case. The legislative authority for issuing the bonds in both cases are the acts of March 7, 1867; February 26, 1869, and March 24, 1869, all of which were supplemental to the charter of the Chicago, Danville and Vincennes Railroad Company, passed February 16, 1865. These acts are all printed at large, and shown in both records, and I do not reproduce them here.

Both cases were submitted to the court, to be tried without a jury, which resulted in a *general* finding in each case, and judgments for the plaintiffs.

In the Fairbanks case, the learned judge who heard the cases in the court beow filed an opinion, but there was no special finding of facts in either case upon which the opinion was based.

At this point I desire to particularly call the court's attention to an error of fact which the court below fell into, although it did not change the result of his investigations,

and, had the fact existed as he supposed, his Honor Judge Blodgett assigned a legal ground for holding it unavailing as a defense to the bonds. The error is this: The court, for some reason, supposed that the $25,000 voted by the people of Sheldon on March 7, 1870, was on condition that the railroad should be constructed *through* the town; and counsel for the town treats this point as the vital issue in the cases.

The fact is, no such condition was imposed by the vote, or by any proceedings following the vote. The evidence bearing on this point is found on pages 26, 27, 28 and 29 (printed pages 13 and 14) of the Day record, and on pages 42, 43 and 44 (printed pages 19 and 20) of the Fairbanks record.

Referring to this election record, the first document shown is the Notice of Election. The first clause is for a contribution, absolute and unconditional, or donation of $25,000 to aid in building the road.

The next clause, beginning with the word "ALSO," appropriates a *further* sum as the town board may direct, "to procure and to furnish to said company the right of "way for said road through said township of Sheldon; "said appropriation to be made only on condition that the "said Chicago, Danville and Vincennes Railroad be located "and constructed, and their trains running thereon from "Chicago, and into the town plat of the village of Shel-"don," etc.

Following this is the record of the election. The first paragraph of this record, relating to voting $25,000 aid, is wholly unqualified. The second paragraph, beginning with the word "also," records an appropriation of

an additional sum to the $25,000 mentioned in the first paragraph, for right of way through the town, conditioned that the road should be constructed through the town, which sum was never appropriated, and for that reason the road was not constructed through the town. Possibly the $18,000 voted November 23, 1869, was intended to cover the right of way, but that sum was never paid, nor were bonds ever issued. Following the record of the elections is the formal acceptance by the railroad company of both appropriations, it agreeing to build the road in pursuance of the terms of the votes.

This is all the record, in these two cases, discloses as to any conditions attached to the vote of March 7, 1870, in pursuance of which the bonds in controversy were issued.

There is no recital on the face of the bonds in these cases that an election was held, wherefore it became necessary, *aliunde*, to show that in fact the legal voters in the town of Sheldon did in fact hold an election and voted $25,000 in aid of the Chicago, Danville and Vincennes Railroad, in pursuance of which the bonds in these cases were issued.

Citation to pages of record in reference to the election shown above.

The bonds do not show upon their face the legislative acts under which the bonds were issued, but these acts are admitted and are a part of the agreed facts in the cases, and found on printed pages 16 to 21 in the Day record, and on printed pages 22 to 27 of the Fairbanks record.

The court will observe that these cases are almost identical with the case of *The Town of Martinton* v.

PHILADELPHIA
BAR
ASSOCIATION

Findings
676-737
112-678

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 867.

THE TOWN OF SHELDON, PLAINTIFF IN ERROR,

vs.

C. W. DAY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JUNE 21, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 867.

THE TOWN OF SHELDON, PLAINTIFF IN ERROR,

vs.

C. W. DAY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 Pleas in the circuit court of the United States, for the northern district of Illinois, held at the United States court rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge of the United States for said northern district of Illinois, on Monday, the seventeenth day of March, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the one hundred and eighth year.

WM. H. BRADLEY, *Clerk.*

C. W. DAY
vs.
THE TOWN OF SHELDON. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the second day of August, A. D. 1883, came the plaintiff by his attorneys and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his *præcipe* for a writ of summons, and also at the same time filed his bond for costs in said entitled cause; which said *præcipe* and bond are respectively in the words and figures following, to wit:

Præcipe.

Circuit Court of the United States, Northern District of Illinois.
October Term, A. D. 1883.

2 C. W. DAY
vs.
THE TOWN OF SHELDON, IROQUOIS COUNTY, ILL'S. } Asst. Dam., $5,000.00.

WM. H. BRADLEY, Esq., clerk, &c.

Please issue summons in above and oblige

THOMAS S. McCLELLAND AND
GEORGE A. SAUNDERS,
Pl'ff's Att'ys.

Endorsed: Filed Aug. 2, 1883. W. H. Bradley, clerk.

Bond for Costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

Circuit Court. October Term, A. D. 1883.

C. W. DAY
vs.
THE TOWN OF SHELDON, IROQUOIS COUNTY, ILL'S. } In Ass't.

I enter myself security for costs in this cause, and promise to pay all costs, which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the pl'ff of any costs ordered or adjudged to be paid by him, I

hereby agree and stipulate that execution may issue against
3 my property for any costs taxed against him. Dated this 2d day of August, A. D. 1883.

GEO. A. SANDERS.

Endorsed: Filed Aug. 2, 1883. W. H. Bradley, clerk.

Summons.

On the same day, to wit, on the second day of August A. D. 1883, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ was returned without service.

Afterwards, to wit, on the eleventh day of August, A. D. 1883, came the plaintiff, by his attorneys, and filed in said clerk's office his declaration in said entitle cause; which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

Circuit Court of the United States. October Term, A. D. 1883.

C. W. Day, who is a citizen of the State of Massachusetts, the plaintiff in this suit, by Thomas S. McClelland and George A. Sanders, his attorneys, complains of the Town of Sheldon, a body corporate, organized and existing under and by virtue of the laws of the State of Illinois, and located in the county of Iroquois, in
4 said State and in the district aforesaid, in a plea of trespass on the case on promises; for that heretofore, to wit, on the 1st day of June, A. D. 1871, the said plaintiff, by the name and style of The Township of Sheldon, made, executed, and delivered its certain eighteen (18) instruments, partly printed and partly in writing, three (3) of which being commonly called bonds or railroad bonds or promissory notes, for the sum of one thousand dollars each, numbered 11, 22, and 25, respectively, made payable to the bearer thereof at the Mechanics' National Bank in Chicago, Illinois, on June 1st, 1881; and the other fifteen (15) of said instruments being attached, five (5) to each of said bonds 11, 22, and 25, and being commonly known as coupons or interest warrants, and representing the annual interest due on said bonds number 11, 22, and 25, for the years A. D. 1877, 1878, 1879, 1880, and 1881, each for the sum of one hundred dollars, said bonds and said coupons respectively bearing the number 11, 22, and 25, and executed by said defendant, by A. B. Caldwell as supervisor and D. W. Ayers as town clerk, said coupons being payable to the bearer thereof at said bank on the respective days of their maturity, a copy of one of which said bonds, to wit, said bonds number 11 and 22, being like said bond No. 25, and one of said coupons is a *fac-simile* of the other of said coupons, except as to dates of maturity, are herewith filed as copies of account sued on and made a part of this declaration.

And plaintiff avers that on, to wit, October 20th, 1871, said
5 bonds were duly registered in the office of the auditor of

public accounts for the State of Illinois, as provided by law, as will appear by the certificates of registry on the backs of said bonds, and each of them.

And plaintiff avers that on, to wit, on November 1st, 1871, and before the maturity thereof, he became the purchaser and owner of said bonds and coupons, and all of them, in good faith, for a good and valuable consideration, and without notice of any defences to the same, or to either of them.

And plaintiff avers that on, to wit, on June 1st, 1883, then and there, at the district aforesaid, said defendant became liable to pay said plaintiff said several sums of money in said bonds and coupons specified, and each and every of them, according to the tenor and effect thereof; and, being so liable, the defendant, in consideration thereof, then and there promised to pay said plaintiff said several sums of money in said bonds and coupons mentioned, and each and every of them, whenever said defendant should thereafter be requested; yet the said defendant, though often requested, and at said bank, as aforesaid, has not paid said bonds and coupons, or any or either of them, or any part thereof, to said plaintiff, but refuses so to do, to the damage of said plaintiff of five thousand dollars; wherefore he brings suit, &c.

THOMAS S. McCLELLAND,
GEORGE A. SANDERS,
Pl'ff's Att'ys.

6 Copy of one of the bonds sued on, being a *fac simile* of the others, Nos. 11 & 25:

"UNITED STATES OF AMERICA, *State of Illinois:*

"No. 22 *Sheldon Township Railroad Bond.* $1,000.

"Know all men by these presents, that the township of Sheldon, in the county of Iroquois and State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars lawful money of the United States of America, which sum of money the said township of Sheldon promises to pay to the bearer at the Mechanics' National Bank, Chicago, on the first day of June, in the years one thousand eight hundred and eighty-one, with interest thereon at the rate of ten per centum per annum, which said interest shall be payable yearly on the first day of June in each year, at the Mechanics' National Bank in the city of Chicago, upon presentation and surrender of the warrants or coupons severally hereto annexed until the payment of the said principal sum.

"This bond is issued under and by virtue of a law of the State of Illinois to authorize cities, towns, or townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad, and the faith of said township of Sheldon is hereby pledged for the payment of said principal sum and interest as aforesaid.

7 "In witness whereof the superviser and clerk of said town-

ship of Sheldon have subscribed this bond, this 1st day of June, one thousand eight hundred and seventy-one.

"D. W. AYRES, *Clerk.*

"A. B. CALDWELL, *Supervisor.*"

Endorsed across the face in red ink: One thousand dollars.

On the back of which said bond is the following certificate of registry, viz.:

"AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *October 20th*, 1871.

"I, Charles E. Lippencott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled 'An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns, in force April 16, 1869.'

"In testimony whereof I have hereunto subscribed my name and affixed the seal of my office, the day and year aforesaid.

"C. E. LIPPENCOTT,
"*Auditor P. A.*"

Bonds 11 & 25 are identical with the above in every respect, except as to the number.

Copy of coupon No. 22, due June 1, 1877, being a *fac simile* of the fifteen (15) coupons sued on, except as to their numbers and date of maturity.

"Sheldon Township Railroad Bond." Interest Warrant.

"$100 No. 22

8 "On the first day of June, 1877, the township of Sheldon, Iroquois county, State of Illinois, will pay to the bearer one hundred dollars, at the Mechanics' National Bank of the city of Chicago, being the years' interest on bond numbered as above.

"D. W. AYERS, *Clerk.*

"A. B. CALDWELL, *Supervisor.*"

The town of Sheldon to C. W. Day, Dr.

To amount due on bonds No. 11, 22 and 25	$3,000 00
To interest on same from June 1, 1881, at 10 per cent.	813 00
To am't due on coupons, due June 1, '77	300 00
" in't on same from June 1, '71, at 6 per cent.	121 00
" am't due on coupons, June 1, '78	300 00
" in't on same from June 1, '78, at 6 per cent.	103 00
" am't due on coupons, June 1, '79	300 00
" in't on same from June 1, '79, at 6 per cent.	83 00
" am't due on coupons, June 1, '80	300 00
" in't on same from June 1, '80, at 6 per cent.	65 00
" am't due on coupons, June 1, '81	300 00
" in't on same from June 1, '81, at 6 per cent.	47 00
March 17, '84. Total	$5,732 00

To amount due on bonds $5,000 00
To amount due on coupons $5,000 00

Endorsed: Filed August 11, 1883. Wm. H. Bradley, clerk.

9 Afterwards, to wit, on the seventeenth day of November, A. D. 1883, there issued out of said clerk's office an alias writ of summons in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Alias Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to the marshal of the northern district of Illinois, Greeting:

We command you again to summon The Town of Sheldon, Iroquois county, Illinois, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the dsitrict aforesaid, on the third Monday of December next, to answer unto C. W. Day of a plea of trespass on the case upon promises, to his damage, as it is alleged, of five thousand dollars; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 17th day of November, in the year of our Lord one thousand eight hundred and eighty-three, and of our Independence the 108th year.

[SEAL.] W. H. BRADLEY, *Clerk.*

10 *Marshal's Return.*

I have served the within summons upon The Town of Sheldon by delivering a true copy of this writ to Barton Bishop, supervisor of said town, on the 3d day of December, 1883.

A. M. JONES, *U. S. Marshal.*
R. D. SHERMAN, *Dep't.*

Endorsed: Filed Dec. 14, 1883. W. H. Bradley, clerk.

Afterwards, to wit, on the nineteenth day of December, 1883, came the defendant, by its attorneys, and filed in said clerk's office its plea in said entitled cause; which said plea is in the words and figures following, to wit:

Plea.

In United States Cir. Court, Northern Dist. of Ill's. Dec. Term, 1883.

C. W. DAY }
vs. } In Assumpsit.
TOWN OF SHELDON. }

And said defendant, by Doyle, Morris & Pierson, its attorneys,

comes and defends the wrong and injury when, &c., and says that it did not undertake and promise in manner and form as said plaintiff hath above alleged in his declaration against it, and of this
11 it puts itself upon the country.

DOYLE, MORRIS & PIERSON,
Att'ys for Def't.

And plaintiff doth the like.

THOMAS S. McCLELLAND,
GEORGE A. SANDERS,
Pl'ff's Att'ys.

Endorsed: Filed Dec. 19, 1883. W. H. Bradley, clerk.

Afterwards, to wit, on the 17th day of March, A. D. 1884, there were filed in said clerk's office two stipulations in said entitled cause; which said stipulations are in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court of the United States. March Term, A. D. 1884.

C. W. DAY
vs. } 18664.
THE TOWN OF SHELDON.

It is agreed that at the trial of said cause the stipulation of facts entered into in the case of J. H. Fairbanks against the Town of Sheldon, being No. 17585 in said court, may be used and treated as the facts in this case as to the matters and things therein expressed.
12 This stipulation to include the use of the affidavit or deposition of Henry Stearns and Robert Caldwell, on file in said cause 17585.

THOMAS S. McCLELLAND,
GEORGE A. SANDERS,
Att'ys for Pl'ff.
ROBERT DOYLE,
Att'y for Sheldon T'p.

Endorsed: Filed March 17, 1884. Wm. H. Bradley, clerk.

Stipulation.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court of the United States. December Term, A. D. 1883.

C. W. DAY
vs. } Ass't. Gen. No. 18664. Term No. 410.
THE TOWN OF SHELDON.

It is hereby stipulated and agreed that a jury be waived in above

cause, and that the same be submitted to the court for trial after March 1st, 1884, on giving notice to Rob't Doyle, att'y for def't, by depositing in the post office at Chicago a notice to him at Watseka, Ills., at least five (5) days before such proposed trial.

DOYLE, MORRIS & PIERSON,
13 THOS. S. McCLELLAND &
GEORGE A. SANDERS,

Jan'y 8, 1884. *Att'ys for Pl'ff.*

Endorsed: Filed March 17, 1884. Wm. H. Bradley, clerk.

On the same day, to wit, on the seventeenth day of March, in the adjourned March term of said court, A. D. 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

C. W. DAY
vs.
THE TOWN OF SHELDON. } Assumpsit.

Now comes the plaintiff, by his attorney, and calls up this cause for trial under the stipulation; and it appearing that the defendant's attorney has had notice of this motion, and upon issue joined by agreement of the parties, as per stipulation filed, they waive the intervention of a jury, and for trial put themselves upon the court; and after hearing the evidence, the court being fully advised in the premises, finds the issue for the plaintiff, and assesses his dam-
14 ages at five thousand seven hundred and thirty-two dollars.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of five thousand seven hundred and thirty-two dollars, his damages, together with his costs in this behalf expended, amounting to thirty-three dollars and eighty cents.

15 On the hearing of said cause the following exceptions were taken and were allowed by the court and made of record, which said exceptions are in the words and figures following, to wit:

Bill of Exceptions.

In United States Circuit Court, Northern District of Illinois.
March Term, 1884.

C. W. DAY
v.
TOWN OF SHELDON. } Assumpsit. No. 18664.

Be it remembered that on the trial of this cause by the court, a jury having been waived by said parties, the following evidence was offered:

Bond.

UNITED STATES OF AMERICA, *State of Illinois:*

No. 11. Sheldon Township Railroad Bond. $1,000.00

Know all men by these presents, that the township of Sheldon, in the county of Iroquois, and State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said township of Sheldon promises to pay to the bearer at the Mechanics' National Bank, Chicago, on the first day of June, in the year one thousand eight hundred and eighty-one, with interest
16 thereon, at the rate of ten per centum per annum, which interest shall be payable yearly on the first day of June in each year at the Mechanics' National Bank of the city of Chicago, upon presentation and delivery of the warrants or coupons severally hereto annexed, until the payment of the said principal sum.

This bond is issued under and by virtue of a law of the State of Illinois to authorize cities, towns, or townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad, and the faith of said township of Sheldon is hereby pledged for the payment of said principal sum and interest as aforesaid.

In witness whereof the supervisor and clerk of said township of Sheldon have subscribed this bond this 1st day of June, one thousand eight hundred and seventy-one.

A. B. CALDWELL, *Supervisor.*
D. W. AYERS, *Clerk.*

[Revenue Stamps $1.00.]

[Endorsed across the face in red ink:] One thousand dollars.

On the back of said bond is the following endorsement:

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *October* 20, 1871.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of
17 counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

Judgment rendered on the within in the circuit court of the United States for the northern district of Illinois, March 17, 1884.

WM. H. BRADLEY, *Clerk.*

Coupon.

Sheldon Township Railroad Bond.

$100. Interest Warrant. No. 11.

On the first day of June, 1877, the township of Sheldon, Iroquois county, State of Illinois, will pay to the bearer one hundred dollars at the Mechanics' National Bank of the city of Chicago, being one year's interest on bond numbered as above.

A. B. CALDWELL, *Supervisor.*
D. W. AYERS, *Clerk.*

[Endorsed across the face in red ink:] 6.

On the back of said coupon is the following endorsement:

Judgment rendered on the within in the circuit court of the United States for the northern district of Illinois, Mar. 17, 1884.

WM. H. BRADLEY, *Clerk.*

18 Bonds No. 22 and 25 are identical with the above and foregoing bond No. 11 in every respect, except as to their numbers.

Copy of the above coupon No. 11, due June 1, 1877, is a *fac-simile* of the fifteen coupons sued on, except as to their numbers and date of maturity, five of said coupons being numbered eleven, and due respectively June 1st, 1877, June 1, 1878, June 1, 1879, June 1, 1880, and June 1, 1881.

Five of said coupons being numbered 22, and due June 1, 1877, June 1, 1878, June 1, 1879, June 1, 1880, and June 1, 1881.

Five of said coupons being numbered 25, and due June 1, 1877, June 1, 1878, June 1, 1879, June 1, 1880, and June 1, 1881.

Each of said coupons being for one hundred dollars.

19 *Stipulation of Agreed Facts.*

United States Circuit Court, Northern District of Illinois. Oct. Term, A. D. 1881.

JOHN H. FAIRBANK
vs.
THE TOWN OF SHELDON. } Assumpsit. No. 17585.

In this case it is hereby agreed and stipulated by and between Sanders and Williams, for plaintiff, and Doyle and Morris, for defendant, that John H. Fairbank is a citizen of Massachusetts, and that he is the owner and holder of the bonds and coupons described in the declaration in this case and offered in evidence, except what appears from the recitals and the law under which they were issued, that The Town of Sheldon is a corporation organized under the township laws of Illinois, and was such corporation at the time the bonds in controversy were issued, and have been such corporation since the year 1865, and is a citizen of the northern district of Illinois, in

Iroquois county, Illinois; that the said bonds were signed by A. B. Caldwell, supervisor of the town of Sheldon, at the time he signed the bonds, and by D. W. Ayers, clerk; that D. W. Ayers was, at the time of signing the bonds and coupons, the clerk of the town of Sheldon, and that the signatures of A. B. Caldwell, supervisor, and D. W. Ayers, clerk, to the bonds and coupons are genuine.

20 That the law under which the bonds and coupons were issued is found in volume I of Private Laws of the State of Illinois, 1867, page 842, in force March 7, 1867.

That the copy of the bond in the declaration is a correct copy of the bond it purports to be a copy of, and a fac-simile of all the others save as to numbers thereof, and that the coupons in controversy are correctly described in the said declaration.

That the following is a correct copy of bond No. 18:

"United States of America, State of Illinois.

No. 18. [Vignette.] $1,000.

Sheldon Township Railroad Bond.

Know all men by these presents, that the township of Sheldon, in the county of Iroquois, and State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said township of Sheldon promises to pay to the bearer, at the Mechanics' National Bank, Chicago, on the first day of June, in the year one thousand eight hundred and eighty-one, with interest thereon at the rate of ten per cent. per annum, which interest shall be payable yearly, on the first day of June in each year, at the Mechanics' National Bank, of the city of Chicago, upon presentation and delivery of warrants or coupons, severally hereto annexed, until the payment of the said principal sum."

21 This bond is issued under and by virtue of a law of the State of Illinois to authorize cities, towns, or townships lying within certain limits to appropriate money and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad, and the faith of said township of Sheldon is hereby pledged for the payment of said principal sum and interest as aforesaid."

In witness whereof, the supervisor and clerk of said township of Sheldon have subscribed this bond, this 1st day of June, one thousand eight hundred and seventy-one.

A. B. CALDWELL, *Supervisor.*
D. W. AYERS, *Clerk.*

[Endorsed across the face in red ink:] One thousand dollars.

The following is a copy of coupon No. 18:

"Sheldon Township" Railroad Bond.

$100. Interest Warrant. No. 18.

On the first day of June, 1881, the township of Sheldon, Iroquois

county, State of Illinois, will pay to the bearer one hundred dollars at the Mechanics' National Bank of the city of Chicago, being one year's interest on bond numbered as above.

A. B. CALDWELL, *Supervisor.*
D. W. AYRES, *Clerk.*

[Endorsed across the face in red ink:] 10.

All the other coupons are fac-simile of the above, save as to Nos., serial Nos., and date of payment. That said bonds were registered in the office of the State auditor of Illinois and endorsed as follows:

"AUDITOR'S OFFICE, ILLINOIS,
"SPRINGFIELD, *October* 20, 1871.

22 "I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled 'An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns,' in force April 16, 1869.

"In testimony whereof, I have hereunto subscribed my name and affixed the seal of my office, the day and year aforesaid.

"[SEAL.] C. E. LIPPINCOTT, *Auditor P. A.*"

That the affidavit of the supervisor who obtained the registry of the bonds of Sheldon Tp., $25,000, is in the words and figures following, and is a correct copy thereof.

STATE OF ILLINOIS,
COUNTY OF IROQUOIS, *October 19th*, 1871.

To the auditor of public accounts of the State of Illinois:

SIR: I hereby certify that the following-described bonds are entitled to registration in your office under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the bonds being numbered from No. 1 to No. 25, incl., for $1,000

23 each, dated June 1st, 1871, and payable June 1st, 1881, being in all 25 bonds, and amounting to $25,000, and bearing interest at the rate of 10 per cent. per annum, payable annually on the 1st day of June.

These bonds are issued by the township of Sheldon, in the county of Iroquois, and State of Illinois, to the Chicago, Danville and Vincennes Railroad Company, under and by authority of the provisions of an act entitled "An act to authorize cities, towns, and township lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville, and Vincennes railroad," approved March 7th, 1867, and by a vote of the people of said township at an election held on the 7th day of March, 1870. And I, as supervisor of said township, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds, and

to entitle them to the benefits of said act last referred to, have been fully complied with, to the best of my knowledge and belief.

A. B. CALDWELL,
Supervisor Sheldon Township.

Subscribed and sworn to by the said Amos B. Caldwell, before me, this 19th day of October, A. D. 1871.

D. W. AYERS, [L. S.]
Justice of the Peace.

24 AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *October 17th*, 1881.

I, Charles P. Swigert, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of certificate of A. B. Caldwell, as supervisor of Sheldon township (Iroquois Co.), in relation to registration of bonds issued by said township to the Chicago, Danville & Vincennes R. R. Co. now on file in, and forming part of, the records of this office.

In testimony whereof, I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[SEAL.] CHAS. A. SWIGERT,
Auditor of Public Accounts.

Endorsed: Filed October 20, 1871. C. E. Lippincott, auditor public accounts.

25 Copies from the town clerk's records of the town of Sheldon, and from files in the county clerk's office of the county of Iroquois, Ills.

STATE OF ILLINOIS, }
County of Iroquois, } *ss.:*

At an election held at the school-house in the village of Sheldon, on the 23d day of November, A. D. 1869, pursuant to a call for a special election, to be held for the purpose of voting a tax to aid in the construction of the Chicago, Danville & Vincennes railroad through the town of Sheldon, making the village of Sheldon a point on the route of said road, there were one hundred and thirty-four (134) votes cast, said election resulting as follows:

For a tax of eighteen thousand ($18,000) dollars	81
Against tax	53
Majority in favor of tax	28

Signed at the village of Sheldon, this 23rd day of November, A. D. 1869.

A. G. WILLARD,
Judge of Election.
DANIEL W. AYERS,
Clerk of Election.

STATE OF ILLINOIS, }
Iroquois County, } ss:

I, Henry A. Butzow, county clerk of said Iroquois county, do hereby certify that the above is a true and correct copy of a return on an election now on file in my office.

Witness my hand and the seal of the county court of said county, this 27th day of September, A. D. 1881.

26 [SEAL.] HENRY A. BUTZOW, *Clerk.*

Filed Nov. 30, 1869.

JAMES W. KAY, *Clerk.*

Election of March 7th, 1870. Page 25th of town records, on file in town clerk's office.

Copy of Notice of Election M'ch 7th, 1870.

"Whereas the supervisor, town clerk, and justices of the peace, together with twelve freeholders of the town of Sheldon, have, in writing, filed a statement that a special town meeting is necessary to the interests of said town, setting forth the object of the meeting:

The inhabitants, legal voters of said town of Sheldon, are therefore hereby notified that a special town meeting will be held at the school-house in Sheldon, on the 7th day of March, 1870, at 9 o'clock in the forenoon, for the purposes following, to wit: To vote for or against an appropriation by said town of the sum of twenty-five thousand ($25,000) dollars, to be donated to the Chicago, Danville & Vincennes R. R. Company to aid in the construction of said road.

Also for the purpose of making the appropriation of a sufficient amount, under direction of the town board of said town, to procure and furnish to said company the right of way for said road
27 through said township of Sheldon, said appropriation to be made only upon condition that the said Chicago, Danville and Vincennes railroad be located and constructed and their trains running thereon from the city of Chicago and into the town plat of the village of Sheldon, and across the Toledo, Peoria & Warsaw railroad, within the limits of their present depot grounds, in said village of Sheldon, and upon the further express condition that this appropriation or donation shall be in lieu of any and all former appropriations made by said town to or for said Chicago, Danville & Vincennes Railroad Company, being the objects contained in said statement filed in my office.

Given under my hand, at Sheldon, this 25th day of Feb'y. A. D. 1870.

D. W. AYERS, *Town Clerk.*

Copy of Results of Election of March 7th, 1870.

"COUNTY OF IROQUOIS, *Town of Sheldon:*

At a special town meeting, held at the school-house in the village of Sheldon, on the 7th day of March, A. D. 1870, pursuant to *all* call for a special election, for the purpose of voting for or against

an appropriation by said town of $25,000, to be donated to the Chicago, Danville & Vincennes railroad to aid in its construction; also for the purpose of making an appropriation of a sufficient amount, under the direction of the town board of said town, to procure and furnish to said railroad company the right of way for said road through the said township of Sheldon, upon conditions set forth in the application and election notices for said meeting, there were one hundred and thirty-nine votes cast, resulting as follows:

For appropriation	89
Against	50
Majority in favor of appropriation	39

Signed at the village of Sheldon, this 7th day of March, 1870.

CLARENCE B. WILLARD, *Moderator.*
D. W. AYERS, *Town Clerk.*"

Copy of Acceptance of Donation by the Railroad Company.

"To the supervisor and town clerk of the town of Sheldon, in the county of Iroquois, in the State of Illinois:

"Whereas the said town of Sheldon did, on the 23d day of November, A. D. 1869, vote to donate the sum of eighteen thousand dollars, and on the 7th day of March, A. D. 1870, did vote to donate the sum of twenty-five thousand dollars, to aid the Chicago, Danville & Vincennes Railroad Company to construct their railroad:

"Now, therefore, you are hereby notified that said railroad company do accept said offers and agreements of said town to aid them in the construction of said railroad; and you are further notified that they intend to construct their railroad through or into said town of Sheldon, in pursuance of the terms and conditions of each of said votes respectively, and shall demand and claim the amount of money so voted by said town.

BLADES & KAY,
Attorneys for Chicago, Danville & Vincennes R. R. Co.

Dated June 20, 1870.

Copy of Call for Election July 18th, 1870.

"To the town clerk of the town of Sheldon, in the county of Iroquois and State of Illinois:

The undersigned citizens, legal voters and tax-payers, together with the supervisor and town clerk, request you to call an election according to law for the purpose of permitting the legal voters of said town to vote for or against subscribing twenty-five thousand dollars to the capital stock of the Kankakee and Indiana Railroad Company, said twenty-five thousand dollars to be in lieu of the twenty-five thousand dollars voted to the Chicago, Danville & Vincennes Railroad Company on the 7th day of March last, and on condition that the railroad of said company be built within the lim-

its of the village of Sheldon, and that the said railroad company take the township bonds at par, said bonds to run ten years at
30 10 per cent. per annum. We would therefore request that said election be held on the 1st day of July, A. D. 1870.

"Witness our hands this 30th day of May, A. D. 1870.

"D. W. AYERS, *Town Clerk.*"

A. B. Caldwell, supervisor, and twelve others sign this call.

Copy of the record of the election July 1, 1870, page 27, town records.

STATE OF ILLINOIS, *Iroquois County:*

I, D. W. Ayers, town clerk of the town of Sheldon, in said county and State, do hereby certify and state that in pursuance of a petition from twelve citizens of said town, together with the town clerk and supervisor, all of whom were legal voters of said town, filed in my office, according to an act of the General Assembly of the State of Illinois, entitled An act to incorporate the Kankakee and Indiana Railroad Company, approved A. D. 1869, an election was duly held upon due notice at the school-house in the village of Sheldon, in said town, on the 1st day of July, A. D. 1870, according to the provisions of said act; and at said election there were cast eighty-two (82) votes for subscription of twenty-five thousand dollars ($25,000) to the capital stock of said company by said town, and thirteen (13) votes against the subscription of said capital stock, and that there was a majority of six'-nine (69) in favor of the subscription
31 of said sum of twenty-five thousand dollars in the capital stock of said company cast at said election.

Signed at Sheldon, July 1st, 1870.

THOMAS FLOWER, *Moderator.*
D. W. AYRES, *Town Clerk.*

That the bonds were signed by the supervisor and town clerk, on or about June 1, 1871, to the Chicago, Danville and Vincennes R. R. Co.; that jury is hereby waived, and trial by the court is agreed upon; that said bonds were issued under the law of March 7, 1867, Private Laws of Illinois, page 842, and it is agreed that any other law or laws pertinent to the issues in this case are considered in evidence.

It is further agreed, that any other evidence may be offered on the trial by either party that shall be pertinent to the issues herein.

Jan'y 2d, 1882.

DOYLE & MORRIS,
Att'ys for T'p.
SANDERS & WILLIAMS,
Att'ys for Pl'ff.

Endorsed: Filed Jan. 13, 1882. Wm. H. Bradley, clerk.

32

Testimony of Henry Stearns.

In United States Cir. Court, Northern Dist. of Ills.

FAIRBANKS *v.* TOWN OF SHELDON.

Henry Stearns and Robert Caldwell, being sworn as witnesses in above cause, Henry Stearns stated as follows: That he was a resident of Iroquois Co., Ills., and had been for over fifteen years, and knew the location of Sheldon township, and the village of Sheldon, Ills., and also the location of the Chicago, Danville and Vincennes railroad, and that said railroad was built through the county of Iroquois in the years 1869, 1870, and 1871, and that the nearest point said road was built to said township of Sheldon was five miles, and the nearest point said road was built to the village of Sheldon was nine miles, and the road built through said village of Sheldon was the Chicago, Lafayette and Cincinnati railroad, and that it was from Saint Anne, two miles north of the Iroquois Co. line, in a southeasterly direction, through said village of Sheldon, and that Joseph E. Young had a contract to grade said road, but that he never was the manager or had control of said Chicago, Lafayette, and Cincinnati railroad, but it was always controlled and run by
33 the C. L. & C. R. R. Co., no ways connected with the Chicago, Danville and Vincennes Railroad Company.

It is admitted above in substance of said witnesses' testimony.

ROBERT DOYLE,
For Township.
SANDERS AND WILLIAMS,
Att'ys for Pl'ff.

Endorsed: Filed June 29, '82. Wm. H. Bradley, clerk.

Section 1 of Act of February 16, 1865.

In force Feb. 16, 1865.

An act to incorporate the Chicago, Danville and Vincennes Railroad Company.

Corporators—Name and style—Powers—Single and double track—Route—Width of road.

SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That William D. Judson, Joseph E. Young, James M. Walker, Joseph Peters, John C. Short, Alvan Gilbert, C. A. Lake, James K. Richie, William Kile and their associates, successors and assigns are hereby created a body politic and corporate by the name and style of "The Chicago, Danville and Vincennes Railroad Company," with perpetual succession, and by that name be, and are hereby, made capable in law and equity to sue and be sued, plead and be impleaded, defend and be defended in any court of law and equity in this State, or any other
34 place, to make and use a common seal, and the same to alter and renew at pleasure, and shall be, and are hereby vested

with all powers, privileges, and immunities which are or may be necessary to carry into effect the purposes and objects of this act as hereinafter set forth; and said company are hereby authorized and empowered to locate, construct, and complete a railroad, with a single or double track, from a point in Lawrence county on the Wabash river, opposite Vincennes, in the State of Indiana, upon the most eligible route to and into the city of Chicago, by way of Paris in Edgar county and Danville in Vermillion county; and for this purpose the said company are authorized to lay out and locate their said road, not exceeding one hundred feet in width through the whole length of said route, and for the purpose of cuttings, embankments, stone and gravel may take and appropriate as much more land as may be necessary for the construction and security of said road.

35 *Act of March 7th, 1867.*

In force March 7, 1867.

An act to authorize cities, town, or townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad.

Payment of—Proviso.

SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly; That all incorporated towns and cities and towns acting under the township organization law, which lie wholly or partly within 20 miles of the east line of this State, and also between the city of Chicago and the southern boundary of Lawrence county, be, and the same are hereby, severally authorized to appropriate such sum of money as they may deem proper to the Chicago, Danville and Vincennes Railroad Company, to aid in the construction of the road of said company, to be paid to said
36 company as soon as the track of said road shall have been located and constructed through said city, town, or township respectively: Provided, however, That the proposition to appropriate moneys to said company shall be first submitted to a vote of the legal voters of said respective townships, towns, or cities at a regular, annual, or special meeting by giving at least ten days' notice thereof, and a vote shall be taken thereon by a ballot at the usual place of election, and if the majority of votes cast shall be in favor of the appropriation, then the same shall be made; otherwise, not.

Taxes.

SEC. 2. The authorities of said townships, towns, or cities respectively are hereby authorized and required to levy and collect a tax, and make such provisions as may be necessary and proper for the prompt payment of the appropriation under the provisions of this law.

Taxes legalized and valid.

SEC. 3. And be it further enacted, That all the taxes heretofore

voted in any and all of the townships, towns, or cities along the line of the aforesaid road, in aid of the construction of said road, are hereby legalized and declared valid.

Conditional votes.

SEC. 4. And be it further enacted, That any and all of said townships, towns, or cities within the county of Iroquois and along said line of road as aforesaid, may vote for or against such taxes, conditioned that the town of Watseka, in said county, shall be made a point on said road, and in case a sufficient amount of such conditional taxes be voted in said Iroquois county, to build the additional length of road required to make said town of Watseka a point in the same, then and in that case said road shall be so located as to run through or adjoining said town of Watseka.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved March 7, 1867.

Act of Feb'y 26, 1869. Railroad Subscriptions.

In force Feb. 26, 1869.

An act to legalize certain aids heretofore voted and granted to aid in the construction of the Chicago, Danville, and Vincennes railroad.

Taxes—Appropriations.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the taxes, aids, and appropriations heretofore voted by towns, townships, or cities along the proposed route of the Chicago, Danville, and Vincennes railroad, or in the vicinito of said railroad, be, and the same are hereby, legalized, ratified, and confirmed, and the appropriation so made by the township of Yellowhead, in the county of Kankakee, on the 8th day of June, 1868, is hereby legalized and made valid: Provided, Said road shall run through said township of Yellowhead. This section shall not apply to the townships of Butler, Georgetown, and Ellwood, in the county of Vermilion.

Liable to pay taxes.

SEC. 2. Said towns, townships, or cities shall be liable to pay said donations, aids, or appropriations upon the terms and conditions by them voted whenever said railroad shall be completed into or opposite to said towns, townships, or cities, as the case may be.

Levy taxes.

SEC. 3. For the purpose of facilitating the payment of the said aids, contributions, or appropriations, when the time of payment shall arrive, as hereinbefore provided, the proper authorities of said towns, cities, or townships are authorized and required to levy and collect a sufficient per cent. to meet and liquidate said aids, contributions, or appropriations; or said towns, cities, or townships may bor-

row money and issue bonds therefor for the purpose of paying said aids, which said bonds may be sold in or without this State, and at such prices as said towns, townships, or cities may deem for their best interests, and shall not bear a greater rate of interest than ten per centum per annum, and may provide that the interest be payable semi-annually, and may provide that principal and interest be paid in the city of Chicago, and said towns, townships, or cities shall have power to levy and collect taxes, as other taxes are levied and collected, to provide for the payment of accruing interest, and
39 for the payment of the principal sum when it shall become due.

Action of supervisors legal.

SEC. 4. Be it further enacted, That a certain order or resolution of the board of supervisors of the county of Iroquois, passed by said board on the seventeenth (17) day of September, 1868, and a certain other order or resolution of said board, passed on the eighteenth (18) day of September, 1868, extending the aid or credit of said county to assist the Chicago, Danville and Vincennes Railroad Company in the construction of their said railroad, be, and the same are hereby, legalized, ratified, and confirmed; and said orders or resolutions shall be in full force and effect upon the terms and conditions in said orders or resolutions expressed.

SEC. 5. This act, shall be a public act and be in force from and after its passnge.

Approved February 26, 1869.

40 *Act of March* 24, 1869.

In force March 24, 1869.

An act to enable towns, townships, cities, or counties along the line of the Chicago, Danville and Vincennes railroad to contribute toward the construction of said railroad.

Counties to aid railroad, etc.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the several counties through which the Chicago, Danville and Vincennes railroad shall pass are hereby authorized by action of the board of supervisors, or by action of the county court in counties not acting under township organization, to make appropriations or loan the credit of such county or counties in such sum or sums and upon such terms and conditions as they may deem proper to extend and furnish aid to the Chicago, Danville and Vincennes Railroad Company in constructing the said railroad: Provided, That the question as to whether such county or counties shall make such appropriation, or loan the credit of such county, as hereinbefore stated, be first submitted to the legal voters of such county by said board of supervisors or county court, as the case may be, at any regular or special election called for that purpose, twenty days' previous notice for which shall have been given, designating the amount proposed to be so contributed

to said railroad, and a majority shall have voted for the same.
41 The posting of said notices shall in other respects be regulated by the law now in force concerning the posting of notices for the election of county officers.

Submitted to legal voters.

SEC. 2. The legal voters of any town, township, or city along the line of said railroad, whether said railroad shall run into or through said town, township, or city or not, may, by a majority of the legal voters voting at any election held for the purpose, make appropriations or donations to aid in the construction of said railroad, and the proper authorities shall levy and collect taxes in the manner that other taxes are levied and collected, to promptly meet any obligations assumed under and by virtue of this act.

Contributions—Notice of election.

SEC. 3. Whenever any township shall desire to contribute toward the construction of said railroad, as provided in section two of this act, the vote may be taken at any regular or special meeting, and if at any special town meeting, may be called as now provided by law for such meetings; and whenever the voters of any town or city shall desire to contribute toward the construction of said railroad, a special election may be held by the proper authorities of any such town or city, upon giving ten days' notice in any newspaper published in such town or city, or by posting up written or printed notices in four public places in said town or city of the time, place, and object of such election, or such appropriation may be voted
42 at any regular election in such town or city. The votes at any election held in any incorporated town or city, for the object herein mentioned, shall be canvassed and returned as at any other election in said town or city; and in all cases the notices given shall specify particularly the amount to be voted for or against at such election, and in no case shall the appropriation exceed the amount specified in the notice or notices.

May borrow money—Issue bonds.

SEC. 4. The authorities of any township, town, or city, such township, town, or city having voted to contribute aid in the construction of said railroad, may borrow money to promptly meet such contribution, and issue bonds of such township, town, or city at a rate of interest not exceeding ten per centum per annum, payable annually or semi-annually as they may deem best, and may negotiate the same on such terms as they may deem advisable, and may make the same payable at such place or places and payable at such time or times as they may deem for their best interests, and shall have power to levy, and collect such taxes as may be necessary to pay accruing interest or pay the principal sum.

Payment on completion of road.

SEC. 5. In all cases when any township, town, or city shall have

voted to contribute any aid, as hereinbefore provided, toward the construction of said railroad, the amount or amounts so voted shall become due and payable as soon as said railroad shall be com-
43 pleted into or opposite to any such township, town, or city.

Right of way.

SEC. 6. The authorities of any such township, town, or city may use and appropriate (of) the moneys hereinbefore provided to be raised for the purpose of procuring the right of way for said railroad company for their railroad in the county or counties where such township, town, or city shall be situated, and may authorize the collection of money for such purpose as soon as said railroad line shall be permanently located.

Validity of.

SEC. 7. Whatever any township, town, or city along the line of said railroad shall have heretofore done toward securing the right of way for said railroad is hereby ratified and declared to be valid.

Contributions ratified.

SEC. 8. All aids, contributions, or appropriations heretofore voted or ordered in the counties of Cook, Will, Kankakee, Iroquois, and Vermil-ion, either of townships, towns, cities, or counties, are hereby ratified and confirmed, upon the terms and conditions by them, or each of them, so voted or ordered: Provided, That this section shall not apply to the townships of Butler, Georgetown, and Ellwood, in the county of Vermil-ion, nor to the appropriation made by the county of Vermil-ion by its board of supervisors.

SEC. 9. This shall be a public act, and shall be in force from and after its passage.

Approved March 24, 1869.

44 Which was all the evidence offered in said cause. On above evidence the court found for plaintiff in the sum of $5,732.00, and entered judgment for said sum: to which said defendant then and there excepted.

And inasmuch as said facts and matters aforesaid do not appear of record, this bill of exceptions is presented, and ask that it may be signed and sealed by the judge, which is done accordingly.

H. W. BLODGETT, *Judge*. [SEAL.]

Endorsed: Filed March 17, 1884. Wm. H. Bradley, clerk.

45 Afterwards, to wit, on the third day of May, in the adjourned March term of said court, A. D. 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

C. W. DAY
vs.
THE TOWN OF SHELDON. } 18664. Assumpsit.

Now comes the plaintiff, by Thomas S. McClelland, his attorney, and moves the court for leave to amend the declaration herein by increasing the *ad damnum* to seven thousand dollars; and it appearing to the court that due notice of this motion was heretofore served on the attorneys of the defendant, and that they have notice hereof, it is ordered by the court that leave be given to said plaintiff to amend his said declaration by making the damages seven thousand dollars.

46 On the same day, to wit, on the third day of May, A. D. 1884, came the plaintiff, by his attorney, and filed in said clerk's office his amended declaration in said entitled cause, which said amended declaration is in the words and figures following, to wit:

Amended Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

Circuit Court of United States. March Term, A. D. 1874.

C. W. DAY
vs.
THE TOWN OF SHELDON. } 18664. Ass't.

Now comes said plaintiff, and by leave of court first had and obtained, amends his declaration in said cause as follows, to wit:

In the 21st line of the 3d page of said declaration, the word "five" after the words "to the damage of said plaintiff of" is hereby changed so as to read "seven."

THOMAS S. McCLELLAND,
GEORGE A. SANDERS,
For Pl'ff.

Endorsed: Filed May 3, 1884. Wm. H. Bradley, clerk.

47 Afterwards, to wit, on the sixth day of May, A. D. 1884, there was filed in said clerk's office an appeal bond in said entitled cause which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents, that the town of Sheldon, Iroquois county, and State of Illinois, as principal, and Herman W. Snow, O. Bush, W. B. Fleager, Stephen Buckley, W. E. Julien, John Fleming, Jr., and J. R. Russell as sureties, are held and firmly bound unto C. W. Day, his heirs and assigns, in the penal sum of one thousand dollars, good and lawful money of the United States of America,

for the payment of which, well and truly to be made, we, the said town, and its successors, and we, the said sureties, and our heirs, executors, administrators, and assigns, firmly bind by these presents. Witness our hands and seals, this 2d day of April, A. D. 1884.

The condition of the above obligation is such, that whereas the said C. W. Day, at the March term of the circuit court of the United States for the northern district of Illinois, did obtain a judgment against said town of Sheldon for the sum of five thousand seven hundred and thirty-two dollars, and costs of suit, from which judgment said town has sued out a writ of error to the Supreme Court of the United States, which writ of error has been made a supersedeas on filing this bond:

Now, therefore, if said town shall prosecute said writ of
48 error without delay, and reverse said judgment aforesaid, or if said judgment of said circuit court shall be affirmed in said Supreme Court, shall pay all costs and just damages for delay of this court and of the Supreme Court, and interest that shall arise, and be adjudged against it on account of wrongfully suing out said writ of error, then this obligation to be void; otherwise to remain in full force and virtue.

B. BISHOP, *Supervisor.* [SEAL.]
HERMAN W. SNOW. [SEAL.]
O. BUSH. [SEAL.]
W. B. FLEAGER. [SEAL.]
STEPHEN BUCKLEY. [SEAL.]
W. E. JULIEN. [SEAL.]
JOHN FLEMING. [SEAL.]
J. R. RUSSELL. [SEAL.]

STATE OF ILLINOIS, }
Iroquois County, } ss:

I Robert Caldwell, a notary public in and for said county and State aforesaid, do hereby certify that B. Bishop, supervisor, as principal, & Herman W. Snow, O. Bush, W. B. Fleager, Stephen Buckley, W. E. Julien, John Fleming, Jr., & J. R. Russell, who are personally known to me, acknowledged that they signed said bonds for the purposes as set forth in body of bond, this 5th day of May, 1884.

[SEAL.] ROBERT CALDWELL,
Notary Public.

A. B. Caldwell, being duly sworn, doth depose and say: That he
49 is well acquainted with the signers to above bond, to wit, W. Snow, O. Bush, W. B. ——, Stephen Buckley, W. E. Julien, John Fleming, Jr., J. R. Russell, and that each of said parties are worth in real and personal property in the town of Sheldon above exemptions more than two thousand dollars.

A. B. CALDWELL.

Subscribed and sworn to before me, Robert Caldwell, this fifth day of May, A. D. 1884.

[SEAL.] ROBERT CALDWELL,
Notary Public.

The above bond is satisfactory as to the responsibility of the sureties, but it is not satisfactory as to the form and amount of the penalty.

THOMAS S. McCLELLAND,
Att'y for Pl'ff.

Approved:
H. W. BLODGETT, *Judge.*

Endorsed: Filed May 6, 1884. Wm. H. Bradley, clerk.

50 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court, in the cause wherein C. W. Day is the plaintiff and The Town of Sheldon is the defendant, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this fifteenth day of May, A. D. 1884.

[SEAL.]

WM. H. BRADLEY, *Clerk.*

51 UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court, between C. W. Day, plaintiff, and The Town of Sheldon, defendant, in an action of assumpsit, a manifest error hath happened, to the great damage of the said town of Sheldon, defendant, as by its complaint appears, and it is being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1884, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this tenth day of April, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the 108th year.

[SEAL.]

W. H. BRADLEY, *Clerk.*

[Endorsed:] Supreme Court of the United States. The Town of Sheldon, plaintiff in error, *vs.* C. W. Day, def't in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S. northern district of Illinois.

52 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To C. W. Day, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 1884, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein C. W. Day is plaintiff and The Town of Sheldon is defendant, to show cause, if any there be, why the judgment in said cause mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, this 11th day of April, in the year of our Lord one thousand eight hundred and eighty-four.

H. W. BLODGETT, *Judge.*

Service of above citation accepted this April 14, 1884.

THOS. S. McCLELLAND,
Att'y for Day.

[Endorsed:] Supreme Court of the United States. C. W. Day *vs.* The Town of Sheldon. Citation to October term, A. D. 1884.

Endorsed on cover: N. Illinois C. C. U. S. No. 867. The Town of Sheldon, plaintiff in error, *vs.* C. W. Day. Filed 21st June, 1884.

112-676

Office Supreme Court U. S.
FILED
OCT 20 1884
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

112-676

OCTOBER TERM, A. D. 1884.

THE TOWN OF SHELDON,
Plaintiff in Error,
v.
C. W. DAY,
Defendant in Error.

No. 867.

ERROR TO THE CIRCUIT COURT OF THE NORTHERN DISTRICT OF ILLINOIS.

Filed October..... A. D. 1884.

.....*Clerk.*

DOYLE, MORRIS & PIERSON,
Attorneys for Town.

Robert Doyle,
Counsel.

Republican Print, Watseka, Ill.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 867.

THE TOWN OF SHELDON, PLAINTIFF IN ERROR,

vs.

C. W. DAY, DEFENDANT IN ERROR.

ERROR TO THE CIRCUIT COURT OF THE NORTHERN DISTRICT OF ILLINOIS.

STATEMENT OF THE CASE.

The Plaintiff in error is a municipal corporation organized under the Township Organization Law of the State of Illinois for the purpose of local government, with certain limited powers, and forming part of the territorial divisions of the County of Iroquois and State of Illinois.

This was a suit brought by plaintiff as the owner on bonds numbered 11, 22 and 25, each for $1,000, dated June 1st, 1871, and due June 1st, 1881, with interest

at 10 per cent. as evidenced by coupons thereto attached. Also on 15 coupons of $100 each, as follows:

Five coupons each on bonds 11, 22, and 25 due June 1st, 1877, '78, '79, '80, and '81, as by special counts thereon. Each of said bonds were similar to bond 22 and coupon 22, except as to date when due, to-wit:

No. 22.

"UNITED STATES OF AMERICA, *State of Illinois:*

"No. 22. Sheldon Township Railroad Bond. $1,000.

"Know all men by these presents, that the township of Sheldon, in the County of Iroquois and State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said township of Sheldon promises to pay to the bearer at the Mechanic's National Bank, of Chicago, on the first day of June, in the year one thousand, eight hundred and eighty-one, with interest thereon at the rate of ten per cent. per annum which interest shall be payable yearly on the first day of June in each year at the Mechanic's National Bank of the city of Chicago upon presentation of the warrants or coupons severally hereto annexed until the payment of the said principal sum.

"This bond is issued under and by virtue of a law of the State of Illinois to authorize cities, towns and townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes Railroad, and the faith of said township of Sheldon is hereby irrevocably pledged for the payment of said principal sum and interest as aforesaid.

"In witness whereof the Supervisor and Clerk of said township of Sheldon have subscribed this bond this 1st day of June, one thousand, eight hundred and seventy-one.

"A. B. CALDWELL, *Supervisor.*

"D. W. AYERS, *Clerk.*"

[Revenue stamp $1.00.]

"SHELDON TOWNSHIP RAILROAD BOND.

"$100 Interest Warrant. No. 22.

"On the first day of June, 1876, the township of Sheldon, Iroquois County, State of Illinois, will pay to the bearer one hundred dollars at the Mechanic's National Bank of the city of Chicago, being one year's interest on bond numbered as above.

"A. B. CALDWELL, *Supervisor.*

"D. W. AYERS, *Clerk.*"

It was agreed by counsel that said bonds and coupons were issued under act of March 7th, 1867, found in Private Laws of the State of Illinois, Volume 1, Page 842.

Bonds were registered in Auditor's Office of the State of Illinois October 20th, 1871. The affidavit to entitle them to registration being made October 19th, 1871, by A. B. Caldwell, the Supervisor.

March 7th, 1870, there was an election held in the town of Sheldon to vote an appropriation of $25,000 to be donated to the C., D. & V. R. R. Co. on condition said railroad be located and constructed and their trains running thereon from Chicago into the town plat of village of Sheldon and across the Toledo, Peoria & Warsaw Railroad, within the limits of its present depot grounds in said village, and on the further condition this be in lieu of all other appropriations to said railroad company, which carried by a vote of 89 to 50.

On June 20th, 1870, said railroad company by its attorneys, Blades & Kay, notified the Supervisor and Clerk of the town of Sheldon that the company accepted said donation, and intended to build its road through Sheldon in pursuance of the conditions voted.

That the bonds and coupons were signed by Supervisor and Clerk to the C., D. & V. R. R. Co., about June 1st, 1871.

The above was all the election held in said town to vote aid to a railroad company except one held on July 1st, 1870, to vote a subscription of $25,000 to the stock of the Kankakee and Indiana Railroad Company in lieu of the $25,000 to the C., D. & V. R. R. Co. above, which election carried by a vote of 82 to 13, but which has nothing to do with bonds and coupons sued on, as it is an entirely different act, and the act of the Kankakee and Indiana Railroad Company has never been complied with.

It was proven on trial that the Chicago, Danville and Vincennes Railroad was built through Iroquois County, Illinois, in the years 1869, 1870 and 1871, and the nearest point it was built to said town of Sheldon was five miles, and the nearest point to the village of Sheldon was nine miles, and the road built through the village of Sheldon was the Chicago, Lafayette & Cincinnati Railroad, and that road never had any connection with the C., D. & V. Railroad Company.

The following acts and parts of acts were read in evidence.

Section 1 of Act of February 16th, 1865.

In force February 16th, 1865.

An act to incorporate the Chicago, Danville and Vincennes Railroad Company.

Corporators—Name and style—Powers—Single and double track—Route—Width of road.

SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That William D. Judson, Joseph E. Young, James M. Walker, Joseph Peters, John C. Short, Alvan Gilbert, C. A. Lake, James K. Richie, William Kile and their associates, successors and assigns, are hereby created a body politic and corporate by the name and style of "The Chicago, Danville and Vincennes Railroad Company," with perpetual succession, and by that name be, and are hereby, made capable in law and equity to sue and be sued, plead and be impleaded, defend and be defended in any court of law and equity in this State, or any other place, to make and use a common seal, and the same to alter and renew at pleasure, and shall be, and are hereby vested with all powers, privileges, and immunities which are or may be necessary to carry into effect the purposes and objects of this act, as hereinafter set forth; and said company are hereby authorized and empowered to locate, construct, and complete a railroad, with a single or double track, from a point in Lawrence county on the Wabash river, opposite Vincennes, in the State of Indiana, upon the most eligible route to and into the city of Chicago, by way of Paris, in Edgar county, and Danville, in Vermilion county; and for this purpose the said company are authorized to lay out and locate their said road, not exceeding one hundred feet in width through the whole length of said route, and for the purpose of cutting, embankments, stone and gravel may take and appropriate as much more land as may be necessary for the construction and security of said road.

Also Act of March 7th, 1867.

In force March 7, 1867.

An act to authorize cities, towns or townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes Railroad.

Payment of—Proviso.

SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That all incorporated towns and cities and towns acting under the Township Organization Law, which lie wholly or partly within 20 miles of the east line of this State, and also between the city of Chicago and the southern boundary of Lawrence county, be, and the same are hereby, severally authorized to appropriate such sum of money as they may deem proper to the Chicago, Danville and Vincennes Railroad Company, to aid in the construction of the road of said company, to be paid to said company as soon as the track of said road shall have been located and constructed through said city, town or township respectively: Provided, however, That the proposition to appropriate moneys to said company shall be first submitted to a vote of the legal voters of said respective townships, towns, or cities at a regular, annual or special meeting, by giving at least ten days' notice thereof, and a vote shall be taken thereon by a ballot at the usual place of election, and if the majority of the votes cast shall be in favor of the appropriation, then the same shall be made; otherwise, not.

Taxes.

SECTION 2. The authorities of said townships, towns, or cities respectively are hereby authorized and required to levy and collect a tax, and make such provisions as may be

necessary and proper for the prompt payment of the appropriation under the provisions of this law.

Taxes legalized and valid.

SECTION 3. And be it further enacted, That all the taxes heretofore voted in any and all of the townships, towns, or cities along the line of the aforesaid road, in aid of the construction of said road, are hereby legalized and declared valid.

Conditional votes.

SECTION 4. And be it further enacted, That any and all of said townships, towns or cities within the county of Iroquois and along said line of road as aforesaid, may vote for or against such taxes, conditioned that the town of Watseka, in said county, shall be made a point on said road, and in case a sufficient amount of such conditional taxes be voted in said Iroquois county to build the additional length of road required to make said town of Watseka a point in the same, then and in that case said road shall be so located as to run through or adjoining said town of Watseka.

SECTION 5. This act shall take effect and be in force from and after its passage.

Approved March 7th, 1867.

Also Act of February 26th, 1869.

In force February 26th, 1869.

An act to legalize certain aids heretofore voted and granted to aid in the construction of the Chicago, Danville and Vincennes Railroad.

Taxes—Appropriations.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the taxes, aids, and appropriations heretofore voted by towns,

townships, or cities along the proposed route of the Chicago, Danville and Vincennes Railroad, or in the vicinity of said railroad, be, and the same are hereby legalized, ratified, and confirmed, and the appropriation so made by the township of Yellowhead, in the county of Kankakee, on the 8th day of June, 1868, is hereby legalized and made valid: Provided, Said road shall run through said township of Yellowhead. This section shall not apply to the townships of Butler, Georgetown, and Ellwood, in the county of Vermilion.

Liable to pay taxes.

SECTION 2. Said towns, townships, or cities shall be liable to pay said donations, aids, or appropriations upon the terms and conditions by them voted whenever said railroad shall be completed into or opposite to said towns, townships, or cities, as the case may be.

Levy taxes.

SECTION 3. For the purpose of facilitating the payment of the said aids, contributions, or appropriations, when the time of payment shall arrive, as hereinbefore provided, the proper authorities of said towns, cities, or townships are authorized and required to levy and collect a sufficient per cent. to meet and liquidate said aids, contributions, or appropriations; or said towns, cities or townships may borrow money and issue bonds therefor for the purpose of paying said aids, which said bonds may be sold in or without this State, and at such prices as said towns, townships, or cities may deem for their best interests, and shall not bear a greater rate of interest than ten per centum per annum, and may provide that the interest be paid semi-annually, and may provide that principal and interest be paid in the city of Chicago, and said towns, townships, or

cities shall have power to levy and collect taxes, as other taxes are levied and collected, to provide for the payment of accruing interest, and for the payment of the principal sum when it shall become due.

Action of supervisors legal.

SECTION 4. Be it further enacted, That a certain order or resolution of the Board of Supervisors of the county of Iroquois, passed by said Board on the seventeenth (17) day of September, 1868, and a certain other order or resolution of said Board, passed on the eighteenth (18) day of September, 1868, extending the aid or credit of said county to assist the Chicago, Danville and Vincennes Railroad Company in the construction of their said railroad, be, and the same are hereby legalized, ratified, and confirmed; and said orders or resolutions shall be in full force and effect upon the terms and conditions in said orders or resolutions expressed.

SECTION 5. This act shall be a public act, and be in force from and after its passage.

Approved February 26th, 1869.

Also Act of March 24th, 1869.

In force March 24th, 1869.

An act to enable towns, townships, cities, or counties along the line of the Chicago, Danville and Vincennes Railroad to contribute toward the construction of said railroad.

Counties to aid railroad, etc.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the several counties through which the Chicago, Danville and Vincennes Railroad shall pass are hereby authorized by action of the Board of Supervisors, or by action of the

County Court in counties not acting under township organization, to make appropriations or loan the credit of such county or counties in such sum or sums and upon such terms and conditions as they may deem proper to extend and furnish aid to the Chicago, Danville and Vincennes Railroad Company in constructing the said railroad: Provided, That the question as to whether such county or counties shall make such appropriation, or loan the credit of such county, as hereinbefore stated, be first submitted to the legal voters of such county by said Board of Supervisors or County Court, as the case may be, at any regular or special election called for that purpose, twenty days' previous notice for which shall have been given, designating the amount proposed to be so contributed to said railroad, and a majority shall have voted for the same. The posting of said notices shall in other respects be regulated by the law now in force concerning the posting of notices for the election of county officers.

Submitted to legal voters.

SECTION 2. The legal voters of any town, township or city along the line of said railroad, whether said railroad shall run into or through said town, township or city or not, may, by a majority of the legal voters voting at any election held for the purpose, make appropriation or donation to aid in the construction of said railroad, and the proper authorities shall levy and collect taxes in the manner that other taxes are levied and collected, to promptly meet any obligation assumed under and by virtue of this act.

Contributions—Notice of election.

SECTION 3. Whenever any township shall desire to contribute toward the construction of said railroad, as pro-

vided in section two of this act, the vote may be taken at any regular or special meeting, and if at any special town meeting, may be called as now provided by law for such meetings; and whenever the voters of any town or city shall desire to contribute toward the construction of said railroad, a special election may be held by the proper authorities of any such town or city, upon giving ten days' notice in any newspaper published in such town or city, or by posting up written or printed notices in four public places in said town or city of the time, place and object of such election, or such appropriation may be voted at any regular election in such town or city. The votes at any election held in any incorporated town or city, for the object herein mentioned, shall be canvassed and returned as at any other election in said town or city; and in all cases the notices given shall specify particularly the amount to be voted for or against at such election, and in no case shall the appropriation exceed the amount specified in the notice or notices.

May borrow money—Issue bonds.

SECTION 4. The authorities of any township, town or city, such township, town or city having voted to contribute aid in the construction of said railroad, may borrow money to promptly meet such contribution, and issue bonds of such township, town or city at a rate of interest not exceeding ten per centum per annum, payable annually or semi-annually as they may deem best, and may negotiate the same on such terms as they may deem advisable, and may make the same payable at such place or places and payable at such time or times as they may deem for their best interests, and shall have power to levy and col-

lect such taxes as may be necessary to pay accruing interest or pay the principal sum.

Payment on completion of road.

SECTION 5. In all cases when any township, town or city shall have voted to contribute any aid, as hereinbefore provided, toward the construction of said railroad, the amount or amounts so voted shall become due and payable as soon as said railroad shall be completed into or opposite to any such township, town or city.

Right of way.

SECTION 6. The authorities of any such township, town or city may use and appropriate (of) the moneys hereinbefore provided to be raised for the purpose of procuring the right of way for said railroad company for their railroad in the county or counties where such township, town or city shall be situated, and may authorize the collection of money for such purpose as soon as said railroad line shall be permanently located.

Validity of.

SECTION 7. Whatever any township, town or city along the line of said railroad shall have heretofore done towards securing the right of way for said railroad is hereby ratified and declared to be valid.

Contributions ratified.

SECTION 8. All aids, contributions, or appropriations heretofore voted or ordered in the counties of Cook, Will, Kankakee, Iroquois and Vermilion, either of townships, towns, cities or counties, are hereby ratified and confirmed, upon the terms and conditions by them, or each of them, so voted or ordered: Provided, That this section shall not apply to the townships of Butler, Georgetown and Ellwood,

in the couty of Vermilion, nor to the appropriation made by the county of Vermilion by its Board of Supervisors.

SECTION 9. This shall be a public act, and shall be in force from and after its passage.

Approved March 24th, 1869.

And the Court then entered a judgment for the plaintiff for $5,739 and costs.

ASSIGNMENT OF ERRORS.

1st. Bonds being issued on June 1, 1871, by virtue of election of March 7, 1870, which was on conditions which had not been complied with, and bonds contained no recitals; the holders were bound to show the conditions had been complied with, and could not be held bona fide and innocent holders without such proof, and no such proof was made; therefore Court erred in not following decisions of State courts, and holding bonds void as being issued without authority of law.

2nd. Court erred in allowing interest on coupons, as there was no agreement on their face to pay interest, and it is not allowed by laws of Illinois.

Brief.

1st. In Illinois, municipal corporations without special authority from the Legislature, cannot contract debts to exceed taxes levied or money in treasury, and cannot issue interest bearing obligations.

Madison County v. Bartlett, 1 *Scam*, 71.
Pike Co. v. Hosford. 11 *Ill.*, 175.
Hall v. Jackson Co., 95 *Ill.*, 359.
Hardin Co. v. McFarlan, 82 *Ill.*, 141.
Newell v. School Directors, 68 *Ill.*, 514.
Clark v. School Directors, 78 *Ill.*, 476.
Wells v. Whittaker, 4 *Bradwell*, 386.

2nd. These bonds being issued to aid a railroad company, the acts under which it is claimed they were authorized, must be strictly construed and followed, and they must be authorized by clear language, and not by mere implication.

East Oakland v. Skinner, 94 *U. S.*, 257.
Hoffman v. Jasper Co., 110 *U. S.*, 53.
Anthony v. Jasper Co., 110 *Id.* 697, 699.
Scipio v. Wright, 101 *Id.*, 674.
Bissell v. Spring Valley, 110 *Id.* 169, 173.
Ottawa v. Carey, 108 *Id.*, 123.
Lewis v. Shreveport, *Id.*, 286.
Gaddis v. Richland Co., 92 *Ill.*, 123.

3rd. Neither the charter nor any of the acts cited authorized the Chicago, Danville and Vincennes Railroad to be built through the village of Sheldon, as contemplated by the vote of the people, and it never was so built. Therefore no bonds could issue. See acts of 1865, 1867 and 1869.

4th. If one mode of paying the donation is spoken of in the act that, by necessary implication, excludes all others, as the Legislature is the sole jndge of mode to be allowed.

Wells v. Supervisors, 102 *U. S.* 631, 632.
Ogden v. Daviess Co., Id., 639.
Harter v. Kernochan, 103 *Id.*, 572.
Wilson County v. Natl. Bank, Id. 778.
Pana v. Bowler, 107 *U. S.*, 537.
Middleport v. Aetna Life Ins. Co., 82 *Ill.*, 565.
Gaddis v. Richland Co., 92 *Ill*, 123.
Lippencott v. Pana., Id., 27.

5th. New constitution of Illinois took effect July 2nd, 1870, and prohibited all aids to railroad companies that had not been previously voted under existing laws And if bonds were issued thereafter holder must show by pleading and proof they were authorized by a vote of the people under existing laws, to bring himself within exception, as exception is in the enacting clause, and is for his benefit.

Chit. Pl. Vol. 1, **page* 223.

and authorities cited,

Sedgwick on Construction of Statutes, 93.
Wayman v. Southard, 10 *Wheaton*, 30.
Vorhees v. Bank, U. S., 10 *Pet.*, 471.
Bloodgood v. M. & H. R. R Co., 18 *Wend.*, 20 *to* 24.
Jackson Co. v. Brush, 77 *Ill.*, 66.
Middleport Case, 82 *Id.*, 568.
People ex rel. v. Jackson Co., 92 *Ill.*, 451.
Prairie et al. v. Loyd et al., 97 *Id.*, 191.
Aspinwall v. Commissioners of Daviss Co. 22 *How.* 276.
Concord v. Portsmouth Sav. Bnk. 92 *U. S.* 629.

6th. These bonds being issued under and by vitrue of

a vote of the people March 7th, 1870, on certain conditions which act allowed, but which were never performed, and the bonds not containing any recitals the holders were bound to know conditions, and prove they were complied with before bonds issued, and not having done so they are void.

Block v. Comrs., 99 *U. S.*, 696.
People v. Datcher, 56 *Ill.*, 144.
Alley v. Adams Co., 76 *Ill.*, 101.
People v. Holden, 91 *Ill.*, 450.

7th. As bonds contain no recitals, and being voted on condition, the holders were bound to look to records to see under what conditions voted, as that was the only place such information could be had.

Section 24, *act* 1869, *Cothran's Statute*, *Chap* 139, *section* 67 and 70.

Buchanan v. Lichfield, 102 *U. S.*, 289.
Dixon Co. v. Field, 111 *Id.*, 93.
Northern Bank v. Porter Township, 110 *Id.*, 108.

8th. Holders of bonds must notice all the acts that are referred to in bonds, and also *when* election was held, and what the law was when issued, and all the facts that the law or facts stated, would put them on inquiry of, and if then there was no authority to issue they are void.

Brooklyn v. Ins. Co., 99 *U. S.*, 368.
McClure v. Oxford, 94 *Id.*, 433.
Bates Co. v. Winters, 91 *Id.*, 97.
Ogden v. Co. of Daviess, 102 *Id.*, 640.
And Ill. authorities cited under 5th point.

9th. The act of March 7th, 1867, did not authorize the issue of bonds, but only a payment by immediate taxation.

Middleport Case, 82 *Ill.*, 565.
Wells v. Supervisors, 102 *U. S.*, 626 to 634.

10th. The act of February 26th, 1869, did not authorize issue of bonds, as that was not expressed in the title, as required by constitution. And act of March 24th, 1869, referred to and authorized bonds issued only on elections thereafter to be held.

Lockport v. Gaylord, 61 *Ill.*, 279.
Middleport Case, 82 *Ill*, 565-6.

11th. In Illinois in a case like this or under similar acts, Supervisor and Clerk are not the corporate authorities of the town, but rest with the people legally convened at the polls.

Marshall et al. v. Sillman et al, 61 *Ill.*, 226.
Middleport Case, 82 *Ill.*, 567.
Town of Roberts case, 88 *Id*, 20.
Elmwood v. Marcy, 92 *U. S*, 292.

12th. The common law of England and all statutes in aid thereof prior to 4th year of James the First, shall be in full force and effect till repealed by the Legislature.

Statute of 1845, *Chapter* 62, *sec.* 1.

13th. Where no agreement is made regarding interest, the rate the obligation bears after due, if any, is one of local law, and to be governed thereby.

Holden v. Trust Co, 100 *U. S*, 72.
Ohio v. Frank, 103 *Id*, 698.

14th. In Illinois, county orders are due as soon as countersigned and registered by the treasurer, without presentation or demand of payment.

People ex rel. v. Johnson, 100 *Id.*, 545.

15th. At common law no contract drew interest, and in no case was it allowed without express agreement, it

being entirely a creature of the statutes, and in Illinois no municipality is liable for interest on any of its debts or obligations, no difference how long due, without an *express* agreement to pay interest, as the statute does not apply to municipalities.

Madison Co. v. Bartlett, 1 *Scam*, 67.

and authorities cited :

Pike Co. v. Hosford. 11 *Ill.*, 175.
Pekin v. Reynolds, 31 *Ill.*, 531.
Chicago v. People, 59 *Ill.*, 331.
I. C. R. R. Co. v. Cobb, Blaisdell & Co., 72 *Ill.*, 152.
South Park Comrs. v. Dunlevey, 91 *Ill.*, 54-56.
Chicago v. Allcock, 86 *Ill.* 385.

16th. It is not lawful for counties to agree to pay interest on orders issued for current expenses of the county. And townships have no legal right to agree to pay interest on accounts due, or for an extension of time.

Hall v. Jackson Co., 95 *Ill.*, 359.
Hardin Co. v. McFarlan, 82 *Ill.*, 141.
Wells v. Whittaker, 4 *Brad.* 386.

ARGUMENT.

Our first assignment of error is as follows :

Bonds being issued June 1st, 1871, on election of March 7th, 1870, which was on conditions, which conditions had not been complied with, and as there are no recitals except a reference to law of March 7th, 1867, by its title, as one under which they were issued ; the holders were compelled to show by proof, conditions had been complied with, and not having done so are not *bona fide* holders. Therefore Court erred in not following decisions of State Court, and holding bonds void.

In support of this assignment we contend.

1st. The Courts of Illinois have always held that municipal corporations could not contract debts without having the money in the treasury to pay same, or at least a levy made for the current year and expenses. It being recently held they might anticipate a levy of taxes.

Springfield v. Edwards, 84 *Ill.*, 631.

The authority said town had by statute at time of the issue of bonds, to levy taxes and by whom done, was the following :

See Gross Statute of 1869, Chap. 103, p. 752, entitled, Township Organization, Art. 9, § 7, of which is as follows :

The supervisor shall receive all accounts which may be presented to him against the town, and shall lay them before the board of town auditors at or before their annual meeting.

Also the following sections of Art. 10, same statute, p. 753 :

§ 1. Officers Composing the Board. In each town the supervisor, town clerk and justices of the peace of the town shall constitute a board of auditors to examine the accounts of the overseers of the poor and the commissioners of highways for such town, for money received and disbursed by them.

§ 2. Any Officers Being Absent.] In case of the absence of any or either of said officers or their failure to attend any meeting of the board, those attending may associate with them the collector or assessor of the town, or both, in place of any absentee or absentees, as the case may be, who shall act, for the time being, as members of such board.

§ 3. Meeting of the Board.] The board of auditors of town accounts shall meet at the town clerk's office for the purpose of examining and auditing the town accounts, semi-annually, in their respective towns, on the Tuesdey next preceding the annual [town] meeting of the board of Supervisors, and on the Tuesday next preceding the annual meeting, and such other times as the interests of the town may require.

§ 4. Accounts Filed by the Clerk.] The accounts so audited, and those rejected, if any, shall be delivered, with the certificate of the auditors, or a majority of them, to the town clerk, to be by him kept on file for the inspection of any of the inhabitants of the town. They shall also be produced by the town clerk at the next annual meeting, and shall be there read by him.

§ 5. Charges Against Towns—Compensation of Town Officers.] The board of auditors, composed of the same officers then in office, shall at the same time and place as stated in § 2, [3] examine and audit all charges and claims against their respective towns, and the compensation of all town officers, except supervisors, for county services.

§ 6. Affidavits to Accounts.] The board of auditors may require accounts presented to be verified by affidavit, setting forth that the same is correct and just and unpaid, or if any part thereof has been paid, setting forth how much.

§ 7. Certificate to be Made] The said board shall make a certificate, to be signed by a majority of said board, specifying the nature of the claim or demand, and to whom the amount is allowed, and shall cause said certificate to be delivered to the town clerk of said town, to be by him kept on file, for the inspection of any of the inhabitauts of said town; and the aggregate amount shall be delivered to the supervisor, to be by him laid before the board of supervisors, at their annual meeting. The board of supervisors shall cause the amount of said charges to be levied upon the property of said town, and collected as other taxes are levied and collected. The claims and compensation audited and allowed shall be read to the electors, at the next annual [town] meeting, as directed in § 4 of this article.

§ 8. WHAT ARE TOWN CHARGES.] The following shall be deemed town charges: 1. The compensation of town officers for services rendered their respective towns. 2. Contingent expenses, necessarily incurred, for the use and benefit of the town. 3. The money authorized to be raised by the vote of a town meeting, for any town purposes; and 4. Every sum directed by law to be raised for any town purposes.

§ 9. RAISING MONEY FOR TOWN CHARGES.] The moneys necessary to defray the town charges of each town shall be levied on the taxable property in such town, in the manner prescribed in the act for raising revenue and other moneys for state and county purposes and expenses.

At the time these bonds were issued, the law stood as above, and there was no authority in the general laws of the State authorizing towns to go in debt or issue interest bearing obligations. And the Courts of the State had frequently before that time decided it could not be done without special authority from the Legislature; as they are corporations with limited powers, and can only levy taxes to a limited amount.

Madison County v. Bartlett, 1 *Scam*, 67.
Pike Co. v. Hosford, 11 *Ill*, 175.
Hall v. Jackson Co, 95 *Ill*, 359.
Hardin Co v. McFarlan, 82 *Ill.*, 141.
Newell v. School Directors, 68 *Ill.*, 514.
Clark v. School Directors, 78 *Ill.*, 476.
Wells v. Whittaker, 4 *Brad.* 386.

This has at all times, even to the present, been the ruling in Illinois, and from the foregoing statutes and decisions all parties were bound to know that the general law did not authorize anything to be contracted for on credit by any town without a special act of the Legislature.

2nd. The holders of the bonds were bound to know

what the *laws* and *constitution* at time of their issue *were*, and take particular notice of the act recited in bonds, and that at the time of their issue they were authorized by law and in accordance with a *vote* of the people.

The bonds on their face show they were issued June 1st, 1871, under and by virtue of the act of 1867. (See bond, page 9, record.)

The only mode of donating by the law of 1867, was by a vote of the people at a general or special election to be *paid* to railroad company as soon as its track was built *through* said township. By section 2, the authorities of the town were required to levy and collect a tax and make such provisions as should be necessary for the *prompt* payment of the appropriation under the provisions of this law.

There is not a word in said act that in any way refers to the issue of bonds in aid of any donation to said company.

The electors on March 7th, 1870, voted $25,000 to the Chicago, Danville and Vincennes Railroad Company, on "condition that it build its road, and run its cars thereon from Chicago into the plat of the village of Sheldon, and across the Toledo, Peoria and Warsaw Railway Company, within the limits of its present depot grounds in Sheldon, and to be in lieu of all other aids to said railroad company." The donation was on June 20th, 1870, accepted by said C., D. & V. R. R. Co., on the terms and conditions voted. (See pages 19 and 20, record.

This was all the election held in said town in any way authorizing a donation to said railroad company, except the one of November 23rd, 1869, of $18,000, on a similar con-

dition, (record 18), but the one of March 7th, 1870, was in lieu of this.

By the act of 1867, referred to in the bonds no donation could be made to any railroad company till said road was built *through* such township, and then the *authorities of said town* were to levy and collect a *tax* to promptly meet the appropriation so voted, and by it no town could donate unless it lay within 20 miles of the east line of the State, and between Chicago and the southern boundry of Lawrence county. (See sections 1 and 2, pages 23 and 24, record.)

By this act the railroad company had a strip of country 20 miles wide along the east line of the State from Chicago to the southern boundary of Lawrence county, in which to locate its road, and thus get up a strife between all the towns and cities in that strip to see which would make the largest donation, and thereby obtain the location of said railroad *through* the town, but before any of them had to pay it must be built *through* the town. By that act it was not sufficient that it be built *along* the line of said town. And the *authorities of said town* were the only parties required to act in paying such a donation, and providing therefor by levy of a tax, and where one mode of paying such a donation is provided, this by necessary implication excludes all others.

Wells v. Supervisors, 102 *U. S.*, 632.
Ogden v. Co. of Daviess, Id., 639.
Pana v. Bowler, 107 *Id.*, 537.
Middleport v. Aetna Life Ins. Co., 82 *Ill.*, 565.
Gaddis v. Richland Co., 92 *Id.*, 123.
Lippencott v. Pana, Id. 27.

By that act the supervisor and clerk did not *constitute* the proper *authorities* for the levy of a tax to promptly meet the donation that should be made by the electors, nor did they constitute the proper *authorities* to call the election and *determine* whether such election had been properly carried, and make the record thereof.

Section 1 of the act provides that no donation shall be made till the proposition "has been submitted to a vote of the legal voters at an annual or special meeting for that purpose, on giving 10 days' notice thereof, and the vote taken thereon shall be by ballot at usual place of holding election."

No manner of holding the election is stated, except as above, but the law will then presume the usual mode, as by the general law of the State regarding townships.

The law in townships at that time, in reference to annual or special elections, was as follows :

Article 4, *sections* 1, 9 *and* 10, *Gross statute* 1869, *Chap.* 103, *p.* 744.

§ 1. Town Meetings—Notice Required.] The citizens of the several towns of this State, qualified by the constitution to vote at general elections, shall annually assemble and hold town meetings in their respective towns, on the first Tuesday of April, at such place in each town as the electors thereof, at their annual town meetings, shall from time to time appoint; and notice of the time and place of holding such meetings shall be given by the town clerk, by posting up written or printed notices in three of the most public places in said town, at least 10 days prior to said meeting; and if there shall be a newspaper published in said town, such notice shall be inserted at least once therein, prior to said meeting.

§ 9. Special Town Meetings.] Special town meetings shall be held when the supervisor, town clerk and justice of the peace, or any two of them, together with at least 12

freeholders of the town, shall, in writing, file in the office of the town clerk a statement that a special meeting is necessary to the interest of the town, setting forth the object of the meeting; and the town clerk, or in case of his absence, the supervisor, shall post up notices in five of the most public places in the town, giving at least 10 days' notice of such special town meeting, setting forth the object of the meeting, as contained in the statement filed in his office. Such notice shall likewise be inserted at least once in a newspaper published in the town, if any is published therein. The place of holding special town meeting shall be at the place where the last annual town meeting was held; but in case such place shall be found inconvenient, the meeting may adjourn to the nearest convenient place.

§ 10. Power of Special Town Meeting.] The electors, at special town meetings, when properly convened, shall have power:

1. To fill vacancies in the office of justices of the peace, and to fill vacancies in the office of constable, or any town officer, where the same shall not have been already filled by appointment.

2. To provide for raising money for repairing highways, or building or repairing bridges, in cases of emergency, and to direct the building or repairing thereof.

3. To act upon any subject within the power of the electors at the annual town meeting, which was postponed at the preceding annual town meeting, to be considered at a future special town meeting, for want of time. But special town meetings shall have no power to act on any subject not embraced in the statement and notice calling the same.

By section 1 it is seen the annual election is held on first Tuesday in April, and as neither of the elections of 1869 or 1870 were held on that day, they were special elec-

tions or meetings, and the law applying to manner of holding elections and by whom are as follows:

Id. page 746, *Article* 5, *sections* 1, 2, 3, 4, 5, 9, 10, 13, 14, 17, 18, 20 *and* 22.

§ 1. MODERATOR TO BE CHOSEN.] The electors present at any time between the hours of 9 and 10 o'clock, in the forenoon of the day on which there is an annual or special town meeting, shall be called to order by the town clerk, if there be one. In case there be none, or he is not present, then the voters may elect, by acclamation, one of their number chairman. They shall then proceed to choose one of their number to preside as moderator of such town meeting.

§ 2. HIS OATH.] Before the moderator or the presiding officer of any town meeting shall enter upon the duties of his office, he shall take an oath faithfully and impartially to discharge the duties of such office; which oath may be administered by the town clerk or other proper officer.

§ 3. THE CLERK.] The town clerk, last before elected or appointed, shall be the clerk of the town meeting, and shall keep faithful minutes of its proceedings; in which he shall enter, at length, every order or direction and all rules and regulations made by such meeting.

§ 4.] If the town clerk be absent, then such person as shall be chosen for that purpose by the electors present, shall act as clerk of the meeting.

§ 5. DUTY OF THE MODERATOR.] The moderator chosen by the electors to preside at the annual or special town meeting shall regulate the business and proceedings thereof, and shall decide all questions of orders, and shall make public declaration of all votes passed. When any vote, so declared by him, shall, upon such declaration being questioned by one or more of the electors present, he shall make the vote certain by causing the voters to rise and be counted or by dividing off.

§ 9 WHO ARE VOTERS.] No person shall be a voter at

any town meeting, unless he shall be qualified to vote at general elections, and has been for the last 30 days an actual resident of the town wherein he shall offer to vote.

§ 10. Of Challenges.] If any person offering to vote at any election, or upon any question arising at such town meeting, shall be challenged as an unqualified voter, the presiding officer shall proceed thereupon in like manner as the judges at the general elections are required, adapting the oath to the circumstances of the town meeting.

§ 13. Opening and Closing Town Meetings.] Town meetings shall be kept open from the time of opening in the morning until 6 o'clock in the afternoon, unless the voters present may, by vote, adjourn one hour, from 12 till 1 o'clock; and at all town meetings and elections of town officers the polls may be closed at 4 o'clock in the afternoon, but may be kept open until a later hour, in the discretion of the electors.

§ 14. Minutes of Proceedings.] The minutes of the proceedings of every town meeting, subscribed by the clerk of said meeting, and by the presiding officer, shall be filed in the office of the town clerk, within two days after such town meeting.

§ 17. Poll List.] When the election is by ballot, a poll list shall be kept by the clerk of the meeting, on which shall be entered the name of each person whose vote shall be received.

§ 18. Ballot Box.] When the election is by ballot, the presiding officer shall deposit the ballots in a box provided for that purpose.

§ 20. Canvass of the Votes.] At the close of every election by ballot, the presiding officer shall proceed publicly to canvass the votes, which canvass, when commenced, shall be continued without adjournment or interruption until the same be completed.

§ 22. Result of the Canvass.] The canvass being completed, a statement of the result shall be entered at

length, by the clerk or the meeting, in the minutes of its proceedings, to be kept by him, as before required, which shall be publicly read by him to the meeting: and such reading shall be deemed notice of the result of the election to every person whose name shall be entered on the poll list as a voter.

The election of March 7th, 1870, was a special town meeting, called by the clerk, under sec. 9, art. 4, aforesaid, as is clearly shown by copy of notice of same on page 19 record, and the donation there voted was in lieu of all former donations, and shows the call was for a donation on *conditions* as heretofore shown, and says such was the *statement* filed in his office.

By the 3d clause of section 10 of article 4, it is provided that "special town meetings shall have no *power* to act on any subject not embraced in the *statement* and *notice* calling the same."

By section 2, article 5, all town elections shall be presided over by a moderator who shall be chosen by the electors at the time of holding the election. And by section 3, the town clerk shall act as clerk, if present, and if not, a clerk shall be chosen by electors, who shall keep faithful minutes of all proceedings at the meeetmg.

By section 10 the moderator is to be the judge of the qualification of voters, as regards admitting them.

By section 14, the minutes of the proceedings signed by the *moderator* and a clerk shall be filed in town clerk's office within two days after meeting.

By section 17, a poll list must be kept of the name of each person voting when it is by ballot.

By section 18, the *moderator* shall deposit each ballot, and section 20, at close of election shall canvass all the ballots to ascertain the result.

By section 22, when canvass completed the clerk shall enter at length the result in his minutes, to be kept as before required, and publicly read same to meeting, and *this* shall be deemed notice of the *result*.

Thus the law stood at time of both of said elections, and at the 1869 election, A. G. Willard was the *moderator* or judge, as he calls himself, and Daniel W. Ayres the clerk. (See page 19 record.)

And at the election of 1870, Clarence B. Willard was *moderator*, and D. W. Ayres clerk. (See page 20 record.)

Therefore we say as the law of 1867 refers to no mode of holding the election, and as the general law at that time was as above set out, all of which the holders thereof were bound to notice, the supervisor and clerk could not in any way be considered the corporate *authorities* of said town, and was not authorized by act of 1867 or general law to certify as to said election, or levy taxes for said aid, or issue any bonds under said law, as the aid was to be paid by taxation. The law being that when the act provides no mode of holding the election spoken of, then the election must be held in the manner required by the general law appliable to the corporation referred to.

People v. Dutcher, 56 *Ill.*, 147.

People v. Town of Laenna, 67 *Ill.*, 67.

If they had by recitals in said bonds said "this election was held in the manner required by law, and the conditions pre-

scribed by the voters at said election have been complied with, and the town is indebted to railroad company," it would not have bound the town, for by said act of 1867 the supervisor had nothing to do in holding, or in any manner conducting said election, or certifying thereto, but all these duties belonged to the moderator and clerk as heretofore shown, and the town clerk was not necessarily clerk of election, and so far as these things were concerned the supervisor was a third person, and could in no way bind the town. The holder was bound to know *how* these elections were held, and also *what* the law was concerning them, as there are *no recitals* in said bonds, and the law being as heretofore shown in section 10 of article 4, he was bound to know that the electors could not go outside of the *statement*, and *notice*, as this is clearly stated in the public statute, and all of said proceedings were to be *filed* in the town clerk's office, who alone was the custodian thereof, and as that was the only *place* he could go to ascertain what said *statement* and *notice* contained, and the result of said elections, as filed in the town clerk's office, signed by the moderator and clerk, as the law required, he was bound to know contents of the record. By the act referred to in said bonds the supervisor and clerk have no duty to perform or certify to anything, and therefore the record was the only guide, as clearly decided by this court where there are no recitals.

Dixon Co. v. Field, 111 *U S.*, 93.
NationalBank v. Porter Township, 110 *Id.*, 617.
Buchanan v. Lichfield, 102 *Ill.*, 289.
Carroll Co., v. Smith, 111 *Id.* 562.

The only mode of paying for donation by act of 1867 is a levy of taxes by the *authorities* of said town.

The query then arises, who are the *authorities* of said town for the purpose of *levying taxes?* This being the only mode of payment by law of 1867.

The act does not in any manner intimate who is meant and this being the case, we must see what general law was in reference to townships at that time, as in this matter the same rule will apply as in elections where no mode specified.

By article 19 *of chapter* 103, *Gross, statute* 1869, heretofore cited in full, and to which reference is made, the supervisor and clerk, and the two justices of the town composed the board of audit, and when said board audits an account it is to be signed by a majority of them, and filed with the town clerk, and they are to make a certificate of the amounts and deliver a certificate of the aggregate amount of all of said claims to the supervisor, to be by him laid before the board of supervisors of the county at their annual meeting, who shall cause the same to be extended against the property in said town, as a town tax, the same as other taxes are levied and collected in said county.

From the above, it will be seen that said claim should be audited by the board of audit acting as a body, and the aggregate amount audited by them certified to the county board, thus clearly showing the board of audit as a body are really the *authorities of the town*, and the only ones for the purpose of causing a tax to be extended, as shown by above statute and following authorities.

Marshall v. Sillman, 61 *Ill.*, 225.

Livingston v. Neider, 53 *Ill.*, 302.

Middleport v. Aetna Life Ins. Co., 82 *Ill.*, 567.

Elmwood . Marcy, 92 *U. S.*, 293.

The above statutes and authorities show the supervisor and clerk were *not* the corporate *authorities* under act of 1867, and had no authority to make any representations to bind said town. As regards *how* said election was held, or the *levy* of any tax, they were, so far as those facts are concerned, third persons as heretofore shown.

At the time these elections were held, the act of Febrdary 26th, 1869, on page 24 of record, was in force, the title to which was as follows :

"An act to legalize certain aids heretofore voted and granted to aid in the construction of the Chicago. Danville and Vincennes Railroad."

At the time that act was passed, the constitution of 1848 contained this provision,

"No private or local law which may be passed by the General Assembly shall embrace more than one subject, and that shall be *expressed* in the title."

The *only* thing the act by its title purports to do is to *legalize* certain aids heretofore voted or granted to said railroad company.

From the title, you would conclude there had been some defects in the elections, or in calling the same, or something to that effect. Would you for an instant think of looking in an act so entitled, with such a provision in the constitution, for authority to issue bonds on an election afterwards held? We think not. Especially when the Supreme Court of the State had, on account of that clause of the constitution, at the September term, 1871, held an act with a similar title unconstitutional.

Village of Lockport v. Gaylord, 61 *Ill.*, 279

When this identical act was before the Court, they following the case in 61 Ill., held all provisions therein, not referring to the legalizing of aids, unconstitutional.

Middleport v. Aetna Life Ins. Co., 82 *Ill.*, 565-6.

In fact, the holding on that question has been uniform, and in the last case bonds that had been issued to the same road under these acts as claimed were discussed, and in the Middleport case all of said acts were fully considered, and held not to authorize the issue of bonds. At the same term of Court with Middleport case it passed on two other cases. In both of said cases Court held acts did not authorize the issue of bonds, and declared them void, affirming the Middleport case, but filed no opinions, as law only authorized filing on new questions. See *Belmont v. Aetna Life Ins. Co.*, and *Milford v. Aetna Life Ins. Co.*, in table of unreported cases at end of *Vol.* 84 *Ill.* reports. These three cases were on donations to same railroad company, under same acts as this is claimed to be, but all of them had recitals and this has none, and they are entitled to much weight in this Court, as to construction of laws by State Court.

The other act in force when election was held was March 24th, 1869, on page 25 of record, entitled, "An act to enable townships or counties along the line of the Chicago, Danville and Vincennes Railroad to contribute towards the construction of said railroad."

The first section of this act refers to counties, and was the only act that embraced counties.

The second section refers to townships *along* the line of said railroad, whether it ran *into* or *through* said township or not, and authorized the legal voters thereof, by a majority of them voting at any election held for that purpose, to

make a donation to aid in constructing said railroad, and the *proper authorities* shall levy and collect a tax, the same as other taxes are collected, to promptly meet such obligation.

This section, it will be seen, goes beyond the act of 1867 or February 26th, 1869, and authorizes a donation by a township *along* the line of said railroad, while the other acts required the road built *into* or *through* the town.

By section three of this act it is provided the vote spoken of in section two by a *township*, which is case at bar "may be taken at a special meeting called, as *now provided by law* for such meetings." This section speaks particularly as to manner of calling elections by a town or city, but not as to townships, and says at the end of section "in *no* case shall the appropriations exceed the amount specified in the *notice or notices.*"

By section 4 of the act the *authorities of the township* are authorized to issue bonds drawing 10 per cent. interest in order to borrow money to meet such contribution, and shall have power to levy and collect taxes to pay principal or interest.

By section five, the amount contributed shall be due as soon as railroad built *into* or *opposite* such township.

By section 7. Whatever any township *along* the line of said railroad has heretofore done towards securing the right of way is ratified.

By section eight all aids theretofore voted are ratified on the conditions voted.

The above is the substance of said act, and although the bonds do not refer to this act, and although they contain no recitals it is claimed that this act is authority under the vote aforesaid to issue bonds, as the vote was after said act, and that said holders are innocent holders.

As the holder was bound to know the law can he claim under this act, although not referred to? We do not deny this, but assert as the law that if this act authorized the issue he could claim under it, even though bonds are silent in that respect if he had proven bonds had been authorized by a vote of the people.

But when he claims under this act he must notice *all* of its provisions, and will be bound by *each* and *every* part thereof. Said act must *all* be considered to arrive at the intention of the Legislature, as none of it can be allowed to pass without a meaning, if possible so to do, this being one of the rules of construction.

The third section of the act refers to the election, and as both of the elections held were special elections this section specially provides that "it may be called as now provided by law for such meetings," and as no other mode is any place specified in said act, the word "may" is to be construed "shall," and as the town law provides for the calling of special elections by a written statement, signed by twelve freeholders and two town officers, petitioning the clerk to call a special town meeting, this is the mode meant. (See section 9, article 4, heretofore quoted.)

People v. Dutcher, 56 *Ill.*, 147.

People ex rel v. Town of Laenna, 67 *Ill.*, 67.

The clerk then calls the election according to that *state-*

ment, which he did in this case, and fully set out the conditions in said notice. (See page 19 record, with result shown on page 20 record.)

The third clause section 10, article 4, heretofore shown, provides as follows :

"Special town meetings shall have no *power* to act on any subject not embraced in the statement, and notice calling the same."

Now as this very statute of March 24th, 1869, under which they claim, refers to the general law as to the *mode* of calling special town meeting, he was bound not only to know this act of 1869, but all other acts it refers to, or to which his inquiry was directed, and if from all or any of said acts he could ascertain the bonds were issued without authority they are void in hands of whomsoever they may come.

Brooklyn v. Ins. Co., 99 *U S.*, 368.
McClure v. Oxford, 94 *Id*, 433.
Bates Co. v. Winters, 97 *Id*, 91.
Ogden v. Daviess Co, 102 *Id.*, 640.

This being the case, by what mode of reasoning is the holder of these bonds to avoid the notice given to him in the act of 1869, by the reference to the general law, and then when he is referred to it for information, how is he to avoid taking notice of all facts contained therein that he could by dilligent examination thereof ascertain, and as the above clause is one of those in said article referring to special town meetings. And it particularly refers to the *statement* by the freehhlders and officers to the town clerk, and *notice* by him of the election, and states that it is the limit

of their power. Is he not then put on inquiry as to what said *statement* ond *notice* contains?

We think the logic from the foregoing statement of the law of notice is irresistable that he is.

When he makes this inquiry from whom must it be made, and where can it be found?

The same article the statute of 1869 referred him to regarding the special meeting tells him it is one of the *files* in the town clerk's office, and thus he is referred to the record alone, and when he goes there he finds the notice on page 19 of record, with all the conditions therein set forth, and it says it is the *same* as the statement, and he thus knows no bonds could be issued till all of said conditions were complied with, and if issued without being complied with they are void.

As these bonds say nothing about any election of any kind he must show there was an election held, as all the acts require an election to be held, and as heretofore shown the act of 1867 does not authorize bonds, but payment in an entirely different mode. And as the act of 1869 of March 24th, should be construed as above, we contend he must also take notice of the result of said votes as found on the records of the town, and signed by the moderator and clerk, as heretofore shown, and found on page 18 of record for election of 1869, and page 20 for election of 1870, as by the general law *they* are the *only* parties authorized to declare *result* of the election. (See sections 14, 20 and 22, article 5, heretofore cited in full.

For the election of 1869 there is no *statement* or *notice*

showing the conditions fully, but the *result* of the election shows it was for the purpose of "aiding in the construction of the C., D. & V. R. R. *through* the town of Sheldon, making the village of Sheldon a *point* on the route of said road."

This is sufficient notice to him that no bonds were authorized unless the "road ran *through* the town and made the village of Sheldon a *point* on the road." As this was never done he must have known bonds were void.

Section 3 of this act refers the holder of the bonds to the notices of the election for the purpose of ascertaining the amount appropriated, and if he be required to look to the notices for one purpose, will he not be compelled to notice everything they contain? Can there be any doubt of this proposition? Will it be contended that bonds issued under this act, with such a clause therein, if the amount was in excess of that specified in the notice, the excess would not be void, there being no recitals that in any way bind the town in said bonds? We think not. If such be the case is it not on account of the clause in said section referring holder to the notice, and thus putting him on inquiry? Therefore he must know contents of notice for all purposes, and this shows bonds void under facts proven.

We also contend by section 4 of said act the *authorities of said township* does not mean the supervisor and clerk. This is the section that refers to the issue of bonds, and the same section says said *authorities* shall have power to levy and collect taxes, but no where says *who* they are. As all towns require taxes to be levied for the general expenses of town these parties can be ascertained by the general laws

of township organization, as no town can issue interest bearing obligations without a special law as heretofore shown, but all towns can levy a tax, and as levy of taxes and issuing of bonds are by same parties, according to section 4 of this act, the ascertaining of *one* shows who is to perform the *other* duty.

The levying of taxes we have shown in discussing the act of 1867 under the general law, was to be done by the board of audit, as a body, by certifying to the board of supervisors, and this being the case *they* are the ones to authorize the issue of bonds under this act. (See article 10 heretofore quoted.) This being clearly decided in the *Middleport Case*, 82 *Ill.*, 565. As they never did so authorize or issue, the bonds are void, as the supervisor and clerk are not such authorities as heretofore shown.

We also contend, that under the evidence in this case, there was no authority to issue bonds to said R. R. Co., by virtue of Act of March 24th, 1879, because the town of Sheldon did not lie *along* the line of said railroad, as contemplated by said act.

The words of that act must be construed in connection with the other acts of said company heretofore cited, and thus ascertain what the legislature meant by the word *along* By all the former acts said railroad must be built *through* a township before it had any authority to donate to said company. All of the acts before this one excluded counties, but the first section of this includes counties, but as regards counties, the road must be built *through* them, thus putting counties on the same plane as townships under former acts. In running the road through the different coun-

ties along the line of said railroad, it was found that it, in some instances, passed along the line of townships without going into or through them, and they were as greatly benefited thereby as they would be had it ran into or through them, except as to the taxes for which railroad was liable; and some townships in such cases had really voted aid to said railroad company, and that was the reason of incorporating the seventh section in said act, and thus attempting to validate such aids.

But would it be very beneficial for a township to have a railroad built from five to nine miles from its border? Certainly not. In fact it would be a detriment to it, as thereby it would build up competing towns without its border and detract from business of towns within. And in this case, Sheldon being located on a railroad that had been in operation since 1860, the building of a cross road nine miles west of it would be of great injury, which in fact it was, and such things were no doubt seen by the legislature when they used the word *along*.

The statute must be construed according to its language, and the words used must have the signification they do in common parlance. Now what do you mean when you speak of a farm lying along the highway? Do you mean adjoining said highway? Is this not what all people mean by such language? If another farm lay between it and the highway, would you say it lay along the highway? We think not. In fact that is not the accepted meaning. I saw two head of cattle lying dead along the line of the railroad. What does this mean if not they lay adjacent to and adjoining the railroad? The ships lay along side each other. Does this not mean they lay touching each other? When

you speak of a farm laying along the railroad do you not mean it touches the Right of Way? If another farm lay between it and Right of Way would you so speak? This seems to be the common acceptance of the term, and that is the meaning we must attribute to the legislature, unless it clearly appears from all the language used, some other meaning was intended. Especially is this the case when all such acts must have a strict construction in this kind of a case.

In connection with this take the testimony of Henry Stearns and Robert Caldwell, on page 22 of record, where they state the road was built through the county of Iroquois in the years 1869, 1870 and 1871, and the nearest place it approached the town was 5 miles and the village of Sheldon was 9 miles. The point it ran through in Iroquois county was Watseka, 9 miles due west of Sheldon, on the Toledo, Peoria and Warsaw Railroad, and the very point spoken of in the act of 1867, which declares Watseka shall in certain events be a point on that road, and before this vote road was located through Watseka, and if road was built from Watseka to Danville, another point on road, according to charter it could not go through Sheldon. Therefore we say from all the acts, and especially that of 1867, Sheldon could not be a point on the road. Even the act of March 24th, 1869, did not authorize any donation to said company by the town of Sheldon, as the township did not lay *along* the line of said railroad.

These bonds being voted on conditions that were never performed, and there being no recitals therein, holders as heretofore shown must take notice of all the laws then in force, including the general township organization law, and

all its provisions in connection with the special acts. They were also bound to know that the people of the township could vote aid under said acts on condition, although it was not specially spoken of in any of them, but they all, by language therein, clearly show they could so do, because each of them speak of conditional donations, and besides this the Supreme Court of the State had, long before these bonds were issued, decided such was the privilege of the voters, whether the act so provided or not.

People ex rel. v. Board of Sup. Tazewell Co., 22 *Ill*, 156.
Decided at April term, 1859.
People v. Dutcher, 56 *Ill.*, 147
Decided at September Term, 1870.
Alley v. Adams Co., 76 *Ill*, 101.
People v. Holden, 91 *Ill*, 450.

At the time these bonds were issued the constitution of 1870 was in force, and contained the following provision :

"No township or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to, or loan its credit in aid of such corporation. *Provided* however that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions, where the same have been authorized under existing laws by a vote of the people of such municipalities prior to such adoption."

By the fore part of that provision the donations to roads by townships were absolutely prohibited, and had it not been for the exception therein, there would have been no question about the matter. The query then arises, what is the construction to be placed thereon, and on whom is the burden of proof to show the facts, spoken of in the proviso have taken place to make the township liable?

As these bonds do not in any way refer to any election being held, and the constitution absolutely prohibited such donations unless authorized by a vote of the people prior to its adoption under existing laws, it devolved on the holders to show themselves within the exception, and show by pleading and proof the donation had been authorized by a vote of the people.

The rule in such cases, according to the common law authorities, being as follows:

"When an exception is incorporated in the body of a clause, he who pleads the clause ought also to plead the exception; but where there is a clause for the benefit of the pleader, and afterwards follows a proviso which is against him, he shall plead the clause and leave it to his adversary to show the proviso."

Joes v. Axer, 1 *Ld Raym.*, 120.

Cathcart v. Hurdy, 2 *Man. and Sel.*, 540.

"If the exception, or proviso, forms no part of the plaintiff's title or right of action, but merely a matter of excuse for the defendant, it need not be pleaded but left to the opposite party."

Hart v. Ceis, 8 *Johns*, 48.

"If the proviso is necessary to give the party pleading the clause the right he claims under it, he *must* plead it. But if it forms no part of such right, but merely an excuse for defendant, he need not plead it but leave that to defendant."

Bloodgood v. M. & H. R. R. Co, 18 *Wend*, 20.

To the same effect are all the common law authorities on the construction of statutes, and as the constitution absolutely prohibited such donations made thereafter unless brought within the exceptions therein, the Supreme Court of the State, following the above and all other well con-

sidered cases, decided that the burden was on the parties claiming by virtue of the bonds to show by *pleading* and *proof* bonds were authorized by a vote of the people prior to its adoption under existing laws.

Jackson Co. v. Brush, 77 *Ill.*, 66.
Middleport Case, 82 *Ill.*, 568.
People ex rel. v. Jackson Co, 92 *Ill.*, 451.
Prairie et al. v. Loyd et al., 97 *Id.*, 191.

This Court has frequently decided that such municipalities are bound by recitals in their bonds when made by officers, who are *required* by law to ascertain certain *facts* before issuing bonds, and after having ascertained them *certified* to their existence. This was on the principle that the law pointed to those officers as the ones who were to be the judges of the existence of the facts, and having formed their judgment and certified thereto in the issue of the bonds of the municipality, and the bonds having gone into the markets, and been purchased by parties for a valuable consideration, relying on such recitals the corporation would then be estopped from denying them, as it would be bad faith towards the holders thereof.

This being the rule as regards *recitals* contained in bonds by officers *authorized* to make them, although such recitals may be false, the rule is entirely different when there are *no recitals*, and especially is this the case when, as in this, the constitution absolutely prohibited the issue of bonds after July 2d, 1870, unless authorized by a *vote* of the people under existing laws prior to its adoption.

There is no hardship imposed on the holder in such case to hold him to strict proof of all the acts that entitle him to

an issue of the bonds, and treat the township as you did him in case of recitals, because the authority to issue the bonds is conferred by *public laws*, which all persons are bound to know, and he, in such case, there being no recitals, is bound to know all the conditions were complied with, and if he has not so proven, they are void in the hands of whomsoever they may come.

Block v. Comrs., 99 *U. S.*, 696.
Buchanan v. Lichfield, 102 *Ill.*, 289.
National Bank v. Porter Township, 110 *Id.*, 607.
Dixon Co. v. Field, 111 *Id.*, 93.

We have in this case shown, as we believe, that under the acts of 1867 and 1869, the holder of the bonds on account of the peculiar language of said acts *must* notice the general township organization law, and that the vote was limited to the proposition contained in the *statement* and notice, and it was on condition, and conditions not complied with, and that the Supervisor and Clerk had no authority to do any act, or certify to any fact concerning said elections in the issue of said bonds that would in any way bind the township, as they were *not* the *proper* authorities, and that they had no authority to issue bonds.

But not satisfied with that on the trial, in order to overcome all presumption, if any in such existed we proved the vote *was* on conditions and they were not performed.

Can it be claimed under facts proven, these bonds were authorized by a vote the people? What advantage would it be to people of Sheldon to have voted an aid to a road that ran five miles outside of their town, and nine miles from their place of doing business? There was great reason for restricting it to the Village of Sheldon, for then it would no

doubt greatly enhance not only the value of property but increase largely the population of the place, and also make it a competing line for freights and passengers, and thus increase the value of all the lands in the township. Besides this, the road would run *through* the township at least six miles, as it could never get into the Village of Sheldon and touch Danville, a point named in the Charter, without running at least six miles *through* the township. This alone on the question of taxes was an item, say nothing about the other advantages we have spoken of and which were incentives for the vote, and had the road ran *through* the town as contemplated by the vote, there is no doubt but the increased value of the property on account of the railroad and otherwise, would have been enough in ten years or fifteen years at farthest, to have paid all of said donation. But as it is they have been deprived of all the above increase in value, and the other advantages spoken of. Will this Court say that in such a case where no road is built as contracted for, and no recitals in bonds, and the unjust manner the township has been treated, that they must pay these bonds? We think not; especially when law is so strongly the other way.

In this case there was no opinion filed by the Court, but we suppose he considered the acts of 1867, and March 24th, 1869, as he rendered a judgment against the town, and we will comment on those acts, but not be in any way bound by his opinion should your Honors think the other case a finding of facts, which we do not think you will.

These bonds are only signed by the *supervisor* and *clerk*. Now under the act of 1867 does the recital imply there was an election held in the town in conformity

wit that act and a majority had voted therefor as a matter of law? We say it does not, as *they* had no authority to bind the town in any way by recitals in said bonds concerning said election, because it was a special meeting, and those duties belonged to the moderator and clerk who certified it to town clerk, as heretofore shown, even had there been no provision of the constitution, but the act of 1867 never authorized bonds as previously shown, and there are no recitals referring to any other act. But at time of their issue, the new constitution being in force, it devolved on the holder to notice all of said conditions, and *prove* them, as shown by the authorities We call your Honors special attention to the fact that from the very acts cited of March 24th, 1869, the supervisor and clerk had no authority to issue bonds when the language used therein is construed according to the cannons of construction as we have shown. But it is made much stronger when that construction is sustained by the Supreme Court of the State when passing on the identical acts on bonds *with* recitals, and it held that it belonged to board of audit to issue bonds, as they were the financial agents of township. *Middleport Case*, 82 *Ill.*, 565. And no Court has ever held a township bound by acts of a party not authorized to do the act.

This certificate was made Oct. 20, 1871, what effect does the auditor's certificate and Caldwell's affidavit have? and the affidavit of Caldwell October 19, 1871. (See certificate and affidavit on pages 17 and 18 of record.)

The act of April 16, 1869, Section 2, provides "That said bonds, in order to receive the benefits of this act, shall be registered by the *holder* thereof at the office of the auditor of public accounts, who shall cause the same to be reg-

istered in a book kept for that purpose. Such registration shall show the date, amount, number, maturity and rate of interest of said bond and under what act and by what township issued, and the auditor shall certify upon such bond the *fact* of such registration and receive one dollar therefor."

You will see that none of the above facts are certified on the bond, but simply that it is registered in his office in conformity with said act and there is nothing in it to show the contents of the affidavit of Caldwell, and if the law presumes they knew of its contents, which was made by a person not authorized by the law under which election was held to certifiy those statements, how much more would it presume that they noticed the statement and result of the election from the records of the town direct, and from which the supervisor must have taken it,and thus know the election was on conditions.

By Section 7 of said act it is provided:

"It shall not be lawful to register any bonds under the provisions of this act until after the railroad, in aid of which the debt was incurred, shall have been completed near to or in such township, and the cars shall have run thereon, nor unless the proposition was first submitted to an election of the voters of said township under the provisions of the laws of this State, and a majority of the legal voters *living* in said township were in favor of such donation. And any township shall have the right on making such donation to prescribe the *conditions* on which it shall be made, and such bonds shall *not* be valid unless such conditious *precedent* shall have been complied with, and the Supervisor of the township, immediately on the completion of said railroad near to, into or through said township, as the same may have been agreed upon, and the running of the cars thereon, shall certify under oath that all the preliminary conditions required by this act have been complied with, and then the bonds shall be subjected to registration as hereinbefore pravided."

By section 2 of the act it is made the duty of the *holder*

to cause the bonds to be registered, and by section 7, before they can be registered he must have the affidavit of the supervisor to certain facts. This being the case who is the supervisor acting for? Is it not for the holder, and in pursuance of his wishes? And this being the case, is he not acting as the agent of such holder?

The town has no interest whatever in having said bonds registered, and the law no place makes it its duty so to do. Nor does the act in any place state what the *effect* of such a registration shall have on said bonds. Nor does it say in any place, or even intimate that town will be bound by the acts or assertions of its supervisor, who in order to further the ends of the bond-holder makes certain statements under oath. This was an *exparte* affidavit, and made in the interest of the bond-holder and at his request, and now he seeks to bind the town by such *exparte* statements when the proof clearly shows that not one of the conditions of said vote had been complied with.

How much more is such the fact when the constitution passed July 2d, 1870, absolutely prohibited all donations to a railroad by a township, unless in *accordance with a vote* of the people under existing laws prior thereto.

Would it not be a farce to hold that the organic law of the State could be frittered away about a year and a half after it took effect, and four and a half months after said bonds had been issued and delivered by the mere *exparte* acts of the supervisor of a township, and of the Auditor of State, who is not an officer of the town, but was acting for the bond-holder, and from whom he receives one dollar for every certificate placed on said bonds? If these bonds were ever valid they had all the validity that could be imparted

to them on June 1st, 1871, when issued and delivered, and could not be made good by any subsequent act of any one, especially when the law is silent as to the effect of such acts, and the township is required to do nothing, and as such has no voice in the matter. More especially is this the case when section 7 of said act provides the township may prescribe *conditions* and provides the bonds shall not be valid until the *conditions* have been *complied* with. This being the case, if the holders claim under *this* act, they must notice all its provisions and be governed thereby. And as we have heretofore shown from the general law and the acts under which these bonds purport to have been issued, must *know* the contents of the statement, and that it was a vote on condition, and we certainly have shown the conditions have not been performed, although the duty of bringing themselves within the exception to the constitution devolved on the bond-holders. They should under this act show such facts when there are *no recitals* in the bonds as would bring them within the exceptions in constitution as held by the Supreme Court of Illinois, and not having done so the bonds are void.

Town of Eagle v. Kohn et al., 84 *Ill.*, 295.
Insurance Co. v. Bruce, 105 *U. S.*, 333.

Another serious objection to such a construction of the act of April 16, 1869, is, that act no where professes to provide for the calling of any election for the purpose of voting aid to a railroad company, but was an act passed for an entirely different purpose, to-wit, for the purpose of inducing towns and counties to give aid to the building of railroads, and in order to so incite them, provided all the excess of taxes for all purposes on the valuation over that of 1868, except the state school taxes and the two mill tax

provided for in the constitution, should be paid into the State Treasury for the term of ten years, in order to pay said bonds and interest. And in addition to the taxes raised on the valuation over 1868, as aforesaid, all taxes of every name and nature that arose from any railroad, or its equipments in said township, was to be paid into the State Treasury for the same purpose. This was the sole and entire object of said act, and for this reason, and this alone, was the owners of the bonds required to register their bonds, and until registered they could not obtain the benefits of that act. But that act, from one end to the other, refers to other laws under which said aids may be voted; and the holder was bound to know those other acts had been complied with from the conditions of section seven heretofore shown.

The result of that act has been in this state to cause many municipal corporations to vote aid to railroad companies under the belief the excess of taxes, as aforesaid, occasioned by the value of the railroad and appurtenances, and the excess of value over the year 1868 of the other property in town, would pay all of said bonds and interest, and thus be no burden on said corporations. But this part of said law has long ago, by the Supreme Court of the state, been declared unconstitutional, thus rendering visionary all the hopes of the municipalities who had been led into that trap, and their name is legion.

Ramsey v. Hoeger, 76 *Ill.*, 440.

For the whole of said act see *Gross Statute of* 1869, *p.* 554.

We have quoted all of said act above that, in our opinion, applies to this case and the Supreme Court of the

State, in 76 Ill., has quoted sections 1, 4, 5, and 9, which with 2 and 7 above, shows all the act that could in any way be necessary to its construction, and from the whole act we say our construction is correct.

This act, not professing to authorize an aid to a railroad company by a municipality, will the Courts hold the *exparte* acts of a supervisor of a town under such an act when acting for the bondholder in order that he may get his bond registered, and long after the bond has been issued and delivered, be binding on the town? Or the exparte acts of the State Auditor at same time without the knowledge or consent of the town in any manner bind it unless it be by some *clear* and *explicit* language of the act? We think not, and as the act contains no such language, we believe the trial court did not, in this case, put the proper legal construction on acts of Supervisor and Auditor.

II.

The next error assigned is in allowing six per cent. interest on the coupons after their maturity, as they did not bear any interest on their face.

That the Court allowed 10 per cent on face of bonds from due till date of judgment, and 6 per cent. on coupons from due till date of judgment, can be seen from following calculation. See record, pages 8 & 9, for bonds and coupons:

Judgment rendered March 17th, 1884, for $5,732.

Bonds 11, 22 and 25, of $1,000 each,	$3,000.00.
Int. 10 per ct. from June 1, '81, to Mch. 17, '84,	838.33.
Three coupons due June 1st, 1877, - - -	300.00.

Int. on same, 6 yrs., 9 mos., 16 days, @ 6 per ct., 122.30.
Three coupons due June 1st, 1878, - - - 300.00.
Int. on same, 5 yrs., 9 mos., 16 days @ 6 per cent., 104.30.
Three coupons due June 1st, 1879, - - - 300.00.
Int. on same, 4 yrs. 9 mos., 16 days @ 6 per cent., 86.30.
Three coupons due June 1st, 1880, - - - 300.00.
Int. on same, 3 yrs., 9 mos., 16 days @ 6 per cent., 68.30.
Three coupons due June 1st, 1881, - - - 300.00.
Int. on same, 2 yrs., 9 mos., 16 days @ 6 per cent., - 50.30.

Total, - - - - $ 5,769.83.

This calculation is $37.83 more than the judgment and shows court erred at least in allowing any interest on coupons as we claim. If bonds were valid all that could be allowed is $5,338.30.

This court citing the case of *Holden v. Trust Co.*, 100 *U. S.*, 72. Said in *Ohio v. Frank*, 103 *Id.*, 698.

"The rule heretofore applied is to give the contract rate up to the maturity of the contract, and thereafter the rate prescribed for cases, where the parties themselves have fixed no rate. But when a different rule has been established it governs, of course, in that locality. The question is always one of local law."

The above, being the ruling of this Court on the question of interest on coupons after due, the only question remaining is, What is the rule held by the Courts of Illinois?

The bonds bear 10 per cent. interest on their face, and according to the ruling of the Illinois Courts they will draw the same interest after due they do before, till paid. But the coupons do not draw interest on their face, and there is no agreement to pay interest thereon, and a different rule prevails regarding municipalities than persons. This being the case, we must look to the decisions of the Illinois

Courts, made *prior* to issue of these bonds, and see what it held in similar cases.

At the common law no contract drew interest, and in no case was it allowed, but it was a creature entirely of statute.

Madison County v. Bartlett, 1 *Scam*, 67.

and authorities there cited:

Decided December term, 1832. Also,

Pekin v. Reynolds, 31 *Ill.*, 531.

at April term, 1863.

In both of the last cited cases, the Court decided there was no statute in Illinois that applied to *municipal* corporations.

The case in 1 Scam, 67, was a suit on a county order, long past due, and it was held that the county was not liable for interest thereon *after due*.

This case was followed by one on a contract for the building of a bridge, the price of which was due, and the party refused to receive a county order *unless* it on its face was made to draw interest, which was refused, and then suit was brought on the contract, and although it was admitted the contract was due, there being no *express* agreement to pay interest it was held the county was not liable therefor, even *after due*, and affirmed the case in 1 Scam 67, and distinguished it from the case of *LaSalle Co. v. Simmons*, 5 *Glim.*, 513, which was an action of tort and *not* of contract. *Pike Co. v. Hosford*, 11 *Ill.*, 175. Decided December term, 1849.

The city of Pekin had issued bonds to amount of $100,000 to a railroad company, with coupons for interest

attached, payable in city of New York, the coupons being almost identical with those at bar, except as to the place of payment, and suit was brought on those coupons, claiming interest thereon after due. The Supreme Court, in passing on the question, say, "If such instruments could in any event draw interest without an *express* agreement, it could only be after a proper demand of payment, as until a demand such a body is not in default. But we may go farther, as we held in *Madison Co. v. Bartlett*, 1 *Scam.*, 67, that the State and county were not liable for interest on their orders or warrants, and placed it on the ground of them being corporations with *limited* powers, and it must be presumed they employed all their means to cancel their debts. That only being authorized to levy taxes to a limited extent, the presumption was they had exhausted their power without producing the means to pay; and as the State and county are *not* named in the statute regulating interest, the inference is they were not *designed* to pay interest on their indebtedness, and being a creature of statute we must look to it, and if *not* authorized thereby it could *not be recovered*, as interest was not allowed at common law, and the same reasoning applies to a city or town, and our conclusion is that such obligations do not bear interest."

Pekin v. Reynolds, 31 *Ill.*, 531

Decided at April term, 1863.

The above cases have been affirmed in

Chicago v. People, 59 *Ill.*, 331 *September*, 1870.

I. C. R. R. Co. v. Cobb, Blaisdell & Co., 72 *Ill.*, 152

South Park Comrs. v. Dunlevey, 91 *Ill.*, 54.

Chicago v. Allcock, 86 *Ill.* 385.

Wells v. Whittaker, 4 *Brad.* 386.

The Supreme Court of Illinois has not, so far as we know, ever decided otherwise than above in any case of contract against a municipal corporation, and the decisions are in an unbroken line, beginning with the December term, 1839, up to the present time. This being, as your Honors have said, a matter of *local* law, it certainly must, under

the above local authorities, be decided in favor of the town.

In case from 91 Ill., 54 to 56, the Court said the South Park Commissioners were held to be a municipal corporation, and as such no interest could be collected from them when there had been no express agreement, and Court would not allow interest even on a judgment, unless the land had been *actually* taken, and to same effect is case in 86 Ill. And in case of *Cook Co. v. South Park Comrs.*, 61 *Ill.*, 124, they say there is no error in not allowing interest on verdict from time of its rendition till judgment, and statute of Ill., chapter 74, section 83, allows interest on verdicts against persons; thus clearly showing as against a municipal corporation in Illinois no interest can be allowed without *express* agreement.

The only authorities militating against the above are the following:

In *Walnut v. Wade*, 103 *U. S.*; 696, Court says, The coupons bore interest from the day they were payable, and cite *Aurora v. West*, 7 *Wall*, 105, and *Clark v. Iowa City*, 20 *Wall.*, 589, and *Town of Genoa v. Woodruff*, 92 *U. S.*, 502. In the last case it was in accordance with the decision of the State Courts of New York, and thus within the rule laid down by this Court above. In the case from 20 Wall., it is mere *dicta*, and not necessary to decision of the case. In fact, point is not made. In case from 7 Wall., the case is not argued on principle, but a mere assertion is made that, "it is quite apparent on general principles that they should draw interest after payment of the principal, is unjustly neglected or refused," and Court says after debt is due, the interest, as a general rule, is allowed." Such, no doubt, is the fact on bills and notes issued by persons, and

the reason is because statute applies, as heretofore shown, but without a statute, interest could not be collected from a person, much less a municipality.

In case from 103 U. S. Court says, "There is nothing in this act authorizing the issue of bonds to which the coupons belonged that takes them *out* of these decisions. And we have been referred to no legislation in the State of Illinois, which *forbids* the allowance of interest on this kind of commercial paper."

There was an express agreement in the bonds, but none in coupons in that case. This reasoning is not sound, as by the diligence or negligence of counsel the law might be changed, or more strictly speaking the decision. *By Chap. 62, section 1, Gross statutes of Ill., for* 1869, by act of 1845. "The common law of England, and all statutes in aid thereof, prior to 4th year of James the First, until repealed by Legislature, was to be of full force and effect." Thus law stood when bonds were issued.

Nor is it sound reasoning on question of interest on coupons to say that there is nothing in acts to take them *out* of decisions of this court in States where common law is in force, as by that law interest could *not* be allowed. In such case it requires a *positive* statute before interest in such cases could be collected, as shown very clearly by all the Illinois authorities previously cited, and as heretofore shown there is no such statute for the allowance of interest, and its allowance was erroneous. Especially is this the case when the Courts of Illinois had frequently decided long *before* these bonds or coupons were issued, that it could not be collected without an *express* agreement. And there is no proof it was ever demanded at treasury of town, therefore it could not be said it was unjustly refused.

Some of the authorities cited in Illinois refer to county warrants, which are payable on demand. You might say the were not due till demand made, but the Court has held that such obligations are due as soon as signed, and registered by the treasurer, that is as soon as issued, and no demand or presentment is necessary.

People ex rel. v. Johnson, 100 *Ill.*, 545.

SUMMARY.

To summerize the points made by us, we will say :

1st. The Supreme Court of the State has decided bonds could not be issued under act of March 7th, 1867, and that the act of February 26th, 1869, on account of its title was unconstitutional.

2nd. That under acts of March 24th, 1869, bonds could be issued only by the *authorities of said town* that is the board of audit, as a body, but not by the supervisor and clerk, as they were not the authorities, either under the wording of said act or the general township organization law, as decided by said Court.

3rd. That as these bonds contain *no recitals*, and were issued *after* the constitution of 1870 took effect, which prohibited such aid unless they were issued in accordance with a vote of the people, which they were not, they are void, as in such case the burden of proof is on the holder to show *all* the conditions have been *complied* with.

4th. That no act of the supervisor, nor any other person, not even the people in their corporate capacity, after July 2d, 1870, could in any way bind said town, unless it was in *accordance with a vote* of the people of such town under an existing law prior thereto. This not being the

case the acts of supervisor, or auditor, or any other person after that time could not in any way bind the municipality.

Schall v. Bowman, 62 *Ill.*, 321.
Richards v. Donagho, 66 *Id.*, 73.
Wright v. Bishop. 88 *Id.*, 303.
People v. Jackson Co., 92 *Ill.*, 451.
Lippencott v. Pana, *Id.* 33 to 35.

5th. As no bonds could be issued under act of 1867, and as the act of March 24th 1869, did not provide for the manner of holding the election the holder must notice the general law for the mode, and would thus be compelled to notice the statement, and that nothing could be submitted except what was contained therein, and thus know bonds were void.

6th. That by laws of Illinois no interest can be allowed against a municipality unless by express agreement, and coupons after due, if not so expressed, do not draw interest.

This Court has frequently held that all the decisions of the State Courts, if they had been uniform, at the time of the issue of the bonds, were to be considered the law and really forming part of the bond, and of all such the holder was bound to notice, as well as all changes in the Statutes and Constitutions, and if from all of these taken together there was no authority to issue them, they were void. *Ralls Co. v Douglass*, 105, *U. S.*, 131, and authorities there cited, followed in *Green Co., v. Commissioners*, 109, *Id.*, 105.

You have also held that when you have first passed on an act or constitution of a State where the question came up regularly for decision, and had rendered a decision thereon and the same question subsequently came before the State

Court for decision, and it had decided otherwise on the same statute or constitution, you would not in order to conform to the decision of the State Court, change your ruling unless convinced it was founded on sound reason. *Burgess v. Seligman*, 107, *U. S.*, 33, and authorities cited. This very clause of the constitution of 1870 was before you in the *Concord case*, 92, *U. S.*, 629, where these same acts were considered and bonds like these to the same railroad company, and you then held, very properly we think, that the proviso did not refer to *donations*, but all donations were by the enacting clause absolutely *prohibited*. The reasoning in that case is entirely sound, and coincides with all the authorities on constitutional provisions, while the reasoning in the *Pinkney Case*, 74 *Ill.*, 279, is not sound, as it is built on the *intention* of the framers of the article, instead of the *words* used. All constitutions being construed alone from the words used and not from the intentions of the parties who sat in the convention, as the constitution does not become effective till sanctioned by a vote of the people, and therefore, it must be construed from the language alone.

Can this Court say it is convinced the reasoning in the *Pinkney* case is better on that question than in the *Concord* case, and reverse its own decision on the very identical acts and bonds to same road, as in that case?

But if the Court on that question should conceive its right and duty to follow the rulings of the State Court in that particular, as you have already done in an analogous case from *Gallatin Co.*, in 100 *U. S.*, 48, will you not on the same principle follow the rulings of the State Courts on all the other questions we have referred to, and in which their rulings have at all times been uniform, showing the bonds in this case are void as not being authorized by law? In fact, from all the authorities cited, in *Fairfield v. Gallatin Co.*, 100 *U. S.*, 50, we think you will, and therefore ask said judgment be reversed, and judgment entered for the town for costs.

DOYLE, MORRIS & PIERSON,
Attorneys for Town.

Robert Doyle,
of Counsel

112-676

IN THE

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1884.

(Nos. 867 and 868.)

THE TOWN OF SHELDON,
Plaintiff in Error,
vs.
C. W. DAY,
Defendant in Error.

THE TOWN OF SHELDON,
Plaintiff in Error,
vs.
J. H. FAIRBANKS,
Defendant in Error.

Error to the Circuit Court of the United States, Northern District of Illinois.

Brief and Argument for Defendants in Error.

THOMAS S. McCLELLAND,
Of Counsel for Defendants in Error.

GEO. A. SANDERS,
Attorney for Day and Fairbanks.

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MOTION.

In each of these cases the court below made the writ of error a *supersedeas*, on filing cost bond in the sum of $1,000 by plaintiff in error. To this ruling in the lower court defendants in error objected.

When these causes shall be taken up for consideration, defendants in error desire that the question as to whether a writ of error can be made a *supersedeas*, except on condition of filing a bond in a penal sum sufficiently

large to cover amount of judgment appealed from, with costs and interest, as provided for in section 1,000 of the Revised Statutes of the United States, be passed upon and move the court to dismiss the writ of error, or vacate the order making the writ a *supersedeas*, because of the insufficiency of the bonds filed, or enter such order as may tend to establish a settled practice in this class of cases.

STATEMENT.

These two cases are so nearly identical that, for convenience of the court, I will treat them in the same brief. Both cases embrace the same issue of bonds. The facts agreed upon in the Fairbanks case were received as the facts in the Day case. The legislative authority for issuing the bonds in both cases are the acts of March 7, 1867; February 26, 1869, and March 24, 1869, all of which were supplemental to the charter of the Chicago, Danville and Vincennes Railroad Company, passed February 16, 1865. These acts are all printed at large, and shown in both records, and I do not reproduce them here.

Both cases were submitted to the court, to be tried without a jury, which resulted in a *general* finding in each case, and judgments for the plaintiffs.

In the Fairbanks case, the learned judge who heard the cases in the court beow filed an opinion, but there was no special finding of facts in either case upon which the opinion was based.

At this point I desire to particularly call the court's attention to an error of fact which the court below fell into, although it did not change the result of his investigations,

and, had the fact existed as he supposed, his Honor Judge Blodgett assigned a legal ground for holding it unavailing as a defense to the bonds. The error is this: The court, for some reason, supposed that the $25,000 voted by the people of Sheldon on March 7, 1870, was on condition that the railroad should be constructed *through* the town; and counsel for the town treats this point as the vital issue in the cases.

The fact is, no such condition was imposed by the vote, or by any proceedings following the vote. The evidence bearing on this point is found on pages 26, 27, 28 and 29 (printed pages 13 and 14) of the Day record, and on pages 42, 43 and 44 (printed pages 19 and 20) of the Fairbanks record.

Referring to this election record, the first document shown is the Notice of Election. The first clause is for a contribution, absolute and unconditional, or donation of $25,000 to aid in building the road.

The next clause, beginning with the word "ALSO," appropriates a *further* sum as the town board may direct, "to procure and to furnish to said company the right of "way for said road through said township of Sheldon; "said appropriation to be made only on condition that the "said Chicago, Danville and Vincennes Railroad be located "and constructed, and their trains running thereon from "Chicago, and into the town plat of the village of Shel-"don," etc.

Following this is the record of the election. The first paragraph of this record, relating to voting $25,000 aid, is wholly unqualified. The second paragraph, beginning with the word "also," records an appropriation of

an additional sum to the $25,000 mentioned in the first paragraph, for right of way through the town, conditioned that the road should be constructed through the town, which sum was never appropriated, and for that reason the road was not constructed through the town. Possibly the $18,000 voted November 23, 1869, was intended to cover the right of way, but that sum was never paid, nor were bonds ever issued. Following the record of the elections is the formal acceptance by the railroad company of both appropriations, it agreeing to build the road in pursuance of the terms of the votes.

This is all the record, in these two cases, discloses as to any conditions attached to the vote of March 7, 1870, in pursuance of which the bonds in controversy were issued.

There is no recital on the face of the bonds in these cases that an election was held, wherefore it became necessary, *aliunde*, to show that in fact the legal voters in the town of Sheldon did in fact hold an election and voted $25,000 in aid of the Chicago, Danville and Vincennes Railroad, in pursuance of which the bonds in these cases were issued.

Citation to pages of record in reference to the election shown above.

The bonds do not show upon their face the legislative acts under which the bonds were issued, but these acts are admitted and are a part of the agreed facts in the cases, and found on printed pages 16 to 21 in the Day record, and on printed pages 22 to 27 of the Fairbanks record.

The court will observe that these cases are almost identical with the case of *The Town of Martinton* v.

Fairbanks, No. 866 of the present term, and submitted with these cases. The only points of difference are these:

In the Martinton case, the election occurred on June 13, 1868, and is recited on the face of the bonds. In the Sheldon cases, the election occrrued on March 7, 1870, and is *not* recited on the face of the bond.

The acts of February 26, 1869, and March 24, 1869, were passed *after* the election in Martinton, but *before* the election in Sheldon.

In the Martinton case, the acts of March 7, 1867, and February 26, 1869, are shown on the face of the bonds.

In the Sheldon cases, no act is specifically shown on the face of the bonds.

In all three of the cases, however, the three acts of March 7, 1867, February 26, 1869, and March 24, 1869, are accepted and treated as the legislative authority for issuing the bonds—if any or all of them were passed in a constitutional manner.

In the Martinton case, it is conceded that the railroad was in fact constructed through the town, and every condition of the vote complied with, on the part of the railroad company, before the bonds were issued. In the Sheldon cases, the evidence tends to show that the road was *not* built through that town; but the owners of the bonds contend that the terms of the election held in Sheldon did not make it a condition precedent that the road should be built *through* the town, in consideration of the $25,000 voted, but that the only condition precedent was that the town would appropriate a *further* sum to pay for right-of-

way, if the road would run through the town; and that the acts of 1869 granted full power to the town to vote this aid, even if the town had imposed the condition erroneously supposed by Judge BLODGETT, and urged herein so strenuously by counsel; and if the road did not run through the town, still these bonds are valid in the hands of innocent holders, because the act of March 24, 1869, conferred power on all towns within the prescribed limits, although the road might not run through them, to vote aid, and because the supervisor of the town, being its only executive officer, filed with the Auditor of Public Accounts of Illinois a sworn certificate as a basis for registering these bonds, in which he certified that the funding act of April 16, 1869, which provides that the roads must, in fact, be constructed through the town before such bonds are entitled to registration, had been complied with, thereby estopping towns issuing these bonds from setting up as a defense, that the road had not, in fact, been built through the town.

This supervisor's certificate is shown on printed pages 11 and 12, Day record, and pages 17 and 18, Fairbank's record, and are discussed in Judge Blodgett's brief opinion in the Fairbanks case.

The Martinton bonds and coupons were payable in New York.

The Sheldon bonds were payable in Illinois, a difference only pertinent in considering the question of interest on the coupons.

Elections to vote bonds other than that under which these bonds were issued, are disregarded, as notice of such other elections have not, in any legal manner, been brought

to the knowledge of the bondholders. Even if buyers of these bonds had known of the other elections, that knowledge would not have vitiated the bonds, from any authorities I have been able to find.

There being no recital on the face of these Sheldon bonds that a vote was ever taken, we introduced evidence to show that an election was really held on March 7, 1870, at which a majority of legal voters in the town voted in favor of issuing the bonds, and this fact is conceded. Defendants in error insist that they were not any more bound to inquire into the regularity of this election than if it had been recited on the face of the bond. They were only bound to know that an election was held, its date and results.

The election of March 7, 1870, occurred *after* the two acts of 1869 were passed; therefore, the question of the power of the Legislature to pass curative acts does not arise in these cases.

Outside of supervisor's certificate with the State Auditor, shown in the record, the evidence of the election consisted of agreements of counsel and copies from the town records. The purchasers of these bonds were not required to go to the town records to ascertain whether an election had in fact been held. There being no recitals on the face of the bonds, any information advising buyers that a prior popular election before the bonds were issued was sufficient.

POINTS AND AUTHORITIES.

I.

These causes were submitted to the court below for trial, without the intervention of a jury, and judgment entered upon a general finding. (Day Record, printed page 7; Fairbanks Record, printed page 13.)

No exceptions were taken in the progress of the trial to the rulings of the court in admitting or excluding evidence. No question is made to the sufficiency of the pleadings, and no motion was made in arrest of judgment. There is nothing in this record for the Supreme Court to review. The judgment should be affirmed or the writ of error dismissed.

Insurance Co. v. *Folsom*, 18 Wall. 248, and cases cited thereunder.

Cooper, Exr. v. *Omohundro*, 19 Wall. 64.

Crews v. *Brewer*, Ibid. 70.

Ottoe Co. v. *Baldwin*, 111 U. S. 1.

II.

Under the act of March 7, 1867, copied in the record at printed page 17, Day Record, the town of Sheldon, on the line of the Chicago, Danville and Vincennes Railroad, acquired power to *create a debt* by donating aid to that road.

C. D. & V. R. R. et al. v. *Smith*, 62 Ill. 268.

Under the election of March 7, 1870, shown in the bill of exceptions, the town of Sheldon *created a debt* in

favor of the C. D. & V. R. R. Co., by voting $25,000 in aid of the road.

Chiniqui v. *The People, etc.*, 78 Ill. 576.
County of Moultrie v. *Savings Bank*, 92 U. S. 634.

III.

The act of March 7, 1867, not only confers power on plaintiff in error to donate aid to the railroad, but also authorized the town authorities to "*make such provisions* "*as may be necessary and proper for the prompt payment* "*of the appropriation under the provisions of this law.*" This conferred ample legislative authority.

By issuing bonds instead of levying an immediate tax to pay the donation can be construed only as an irregular execution of the power contained in the act, and does not vitiate the bonds in the hands of an innocent holder for value, purchased before maturity and without notice.

C. & St. L. R. R. Co. v. *City of Sparta*, 77 Ill. 505.

IV.

Legislative authority to aid a railroad carries with it authority to issue bonds or evidences of indebtedness, to raise money to pay the same.

Seybert v. *City of Pittsburg*, 1 Wall. 272.
Rogers v. *Burlington*, 3 Wall. 666.
Police Jury v. *Britton*, 15 Wall. 572.
Concord v. *Portsmouth Savings Bank*, 92 U. S. 625.
Bonham v. *Needles*, 103 U. S. 650.

V.

Bonds illegally issued may be validated by the Legislature.

New Orleans v. *Clark*, 5 Otto, 653.
Commissioners v. *Thayer*, Ibid.
City v. *Lawson*, 9 Wall 478, 485.
Ritchie v. *Franklin Co.*, 22 Wall. 68.
Beloit v. *Morgan*, 7 Wall. 623.
Cooley Const. Lim. 379, 380.

The Legislature may treat an unauthorized or illegal prior popular vote as an expression of the wishes of the municipality in reference to issuing bonds.

County of Leavenworth v. *Barnes*, 4 Otto, 70.
R. R. Co. v. *County of Ottoe*, 16 Wall. 667.

The acts of February 26, 1869, and March 24, 1869, passed *before* the vote of March 7, 1870, contained ample authority for issuing the bonds, irrespective of the act of March 7, 1867.

St. Joseph Township v. *Rogers*, 16 Wall. 659.
Urbana Cases (decided at October term, A. D. 1882).
Keithsburg v. *Frick*, 34 Ill. 405.
Reed v. *Plattsmouth*, 107 U. S. 568.
Cowgil, et al. v. *Long*, 15 Ill. (5 Pick.) 202.

Those acts not inimical to the Constitution of 1848.

Town of Abington v. *Cabeen*, 106 Ill. 200.
Plummer v. *The People*, 74 Ill. 362.
The People v. *Lowenthal, et al.*, 93 Ill. 205.

Decker v. *Hughes*, 68 Ill. 33.
Larrison, et al., v. *Peoria, Atlanta & D. R. R. Co.*, 77 Ill. 11.
Johnson v. *The People*, 83 Ill. 431.
O'Leary v. *Cook Co.*, 28 Ill. 538.
Binz v. *Weber*, 81 Ill. 288.
Supervisors v. *The People*, 25 Ill. 181.
The People v. *Wright*, 70 Ill. 388.
Belleville R. R. Co. v. *Gregory*, 15 Ill. 20.
City of Ottawa v. *The People*, 60 Ill. 121.
Wade v. *Walnut*, 103 U. S. 683.

A legislative act should not be held unconstitutional except for grave reasons clearly disclosed.

The People v. *Hatch*, 33 Ill. 130.
The People v. *Marshall*, 1 Gilm. 672.

VI.

This court is not bound by the late rulings of the State courts on questions involving the validity of municipal bonds, or other commercial paper, where such later rulings are inconsistent with former rulings prior to which the bonds were issued and which became a part of the law of such bonds.

Butz v. *Muscatine*, 8 Wall. 528.
Roberts v. *Bolles*, 11 Otto, 119.
Oates v. *National Bank*, 10 Otto, 246.
Warren Co. v. *Marcy*, 7 Otto, 96.
Venice v. *Murdock*, 2 Otto, 494.
Gelpcke v. *Dubuque*, 1 Wall. 206.
Pine Grove v. *Talcott*, 19 Wall. 666.
Douglas v. *Pike*, 11 Otto, 677.

On implied powers:

Lynd v. *The County*, 16 Wall. 6.
Daniel on Negotiable Notes, § 1,530.
City v. *Commonwealth*, 84 Penn. 82, 500.
Police v. *Britton*, 15 Wall. 578.
Mayor v. *Ray*, 19 Wall. 468.
Dillon on Munic. Corp. § 10.
City v. *Corwith*, 48 Ill. 423.
Committee v. *Reinboth*, 5 Wright (Pa.), 502.
County v. *Brooks*, 111 U. S. 405.

VII.

ESTOPPEL.

The town paid the earlier maturing interest coupons cut from these bonds and is now estopped from denying their validity.

Keithsburg v. *Frick*, 34 Ill. 405.
Knox Co. v. *Aspinwall*, 21 How. 539.
Bissell v. *Jeffersonville*, 24 How. 287.
Moran v. *Commissioners*, 2 Black, 732.
Mercer Co. v. *Hackett*, 1 Wall. 83.
Van Northrup v. *Madison City*, 1 Wall. 291.
Stephenson v. *Schenck*, 5 Wall. 772.
Pendleton Co. v. *Avery*, 13 Wall. 103.
Bonham v. *Needles*, 103 U. S. 650.
Concord v. *Savings Bank*, 92 U. S. 625.

VIII.

INTEREST.

Interest on bonds and coupons were properly allowed.

Wade v. *Walnut*, 103 U. S. 683.
Ohio v. *Frank*, 103 U. S. 697.
Cromwell v. *County of Sac*, 96 U. S. 55.
Aurora City v. *West*, 7 Wall. 104.
Gelpcke v. *City of Dubuque*, 1 Wall., 206.
Hollingsworth v. *City of Detroit*, 3 McLean, 472.
Dunlap v. *Wiseman*, 2 Disney (Ohio), 398.
Town of Genoa v. *Woodruff et al.* 92 U. S. 502.
Hurd's Revision of 1877, chap. 74, sec. 2, p. 589.
Daniels v. *Osborne et al.* 75 Ill. 615.
Dobbins et al v. *Higgins et al.* 78 N. Y. 440.
Steavens v. *Sweet*, Ibid. 446.
Chapman v. *Bush*, 77 Ill. 337.
Edgeman v. *Ashelby*, 76 Ill. 162.
Case v. *Cocker*, Ibid 484.
Harper v. *Ely*, 70 Ill. 586.

ARGUMENT.

Counsel for the Town of Sheldon, at page 46 of his argument in the Day case, and page 52 in his argument in the Fairbanks case, expresses an apprehension that this court may construe the opinion of the court below in the Fairbanks case as a finding of facts, and argues that

such opinion is *not* a special finding of facts. Counsel is wholly correct.

The opinion was not intended as a finding of facts, and could not possibly be so construed.

In both cases, as in the Martinton case, the finding was *general*, and neither one of these records presents any questions of law for the Supreme Court to pass upon. The bills of exceptions bring up nothing for this court to inquire into, as both cases were tried by the court without the intervention of a jury. This point is discussed at some length in *Fairbanks* v. *Martinton*—case No. 866 of the present term—and further notice of it is omitted here. Authorities to sustain this position are found in the brief.

The acts of February 26, 1869, and of March 24, 1869, as well as the act of March 7, 1867, were in full force and effect on March 7, 1870, when the people of the town of Sheldon voted to donate $25,000 towards the construction of the Chicago, Danville and Vincennes Railroad. Therefore the first two are not open to any *alleged* infirmity of being curative or legalizing acts.

The bonds on their face contain no recital of any authority of law, or vote of the people, as justification for their issue. Owners of these bonds, when suing for their collection, are bound to show adequate legislative authority, and also a vote of the people at a time when they were not prohibited by the laws of Illinois from donating aid to railways, in order to maintain their legality.

By agreement in these cases, the three acts above mentioned, with the funding act of April 16, 1869, are

conceded as constituting the legislative authority and the certified copies of the election notice, record of the result of the election of March 7, 1870, acceptance of the railroad company on June 20, 1870, and sworn certificate of the supervisor filed with the State Auditor as constituting evidence of the fact that an election was held on March 7, 1870, and are relied on by Day and Fairbanks as establishing that fact, which is also conceded by the town.

Counsel for the town argue that there existed no legislative authority for any town along the line of the road, and *through* which the road was not in fact constructed, to vote aid; that the vote in Sheldon was in fact conditioned upon the construction of the road *through* the town, and that purchasers of these bonds were charged with knowing whether or not these conditions were fulfilled.

The act of March 24, 1869, contains ample legislative authority, as will be seen by section 2 of that act, on page 20 of the Day record, or page 26 of the Fairbanks record, for donating aid to this road, it being on the line of the road and within twenty miles of the Indiana line, as limited by the act of March 7, 1857. But suppose this act of March 24, 1869, had not been passed, the supervisor filed in the office of the Auditor of Public Accounts, when the bonds were registered, a certificate, sworn to, in which was an affirmation that the funding act of April 16, 1869, which provides that the road must in fact be built through the town proposing to donate aid, before the bonds issued to pay the donation could be registered, and this fact should be evidenced by the supervisor's certificate, had been fully complied with. This auditor's cer-

tificate, on the back of each of the bonds in controversy, is an authentication that the act of April 16, 1869, had been fulfilled, and buyers were not bound to look further. This proposition does not seem to be seriously controverted, and it cannot be, as the force and effect of such registration has been more than once passed upon by this court.

Coming to the second branch, it is not true that the donation of this sum of $25,000, of which the bonds in controversy constitute a part, was voted on condition that the road should be built *through* the town. The court below unwittingly fell into this error of fact, and counsel elaborates the statement at great length in his argument.

The notice of the election, on printed page 13 of the Day record, or page 19 Fairbanks record, is as clear and simple as words could make it. It is not open for interpretation. The purport of the call was to vote, first, $25,000, as unconditional aid to the road; and, second, "for the purpose of making the appropriation of a suffi-"cient amount, under the direction of the town board of "said town, to procure and furnish to said company the "right of way for said road through said township of "Sheldon, said appropriation to be made only upon con-"dition that the said Chicago, Danville and Vincennes "Railroad be located and constructed and their trains "running thereon, from the city of Chicago and into the "town plat of the village of Sheldon," etc.

The record of the election which follows this election notice, confirms this theory that two appropriations were contemplated, to wit, one, wholly unconditioned, of $25,000, to have the road built through Iroquois County, and a *further* sum to be disbursed by the town board in

procuring the right of way *through* the town and village of Sheldon, if the projectors of the road should determine to pass through that town and village.

Bnt suppose the donation of $25,000 had been on condition that the road should be constructed *through* the town and village of Sheldon, the fact that the road was not constructed through the town and village cannot be set up as a defense in these suits. The town would be concluded by the act of its officers in executing the bonds and providing for their registry, by which authentication the town was enabled to sell the bonds whereby to procure money to pay its donation, and so the court below held.

The third branch need not be argued. If the acts shown constitute legislative authority, and if there was in fact a vote of the people endorsing the donation, then defendants in error, as purchasers for value, before maturity and in good faith, will be protected, and they are not charged with knowing whether these minor conditions were complied with or not. This doctrine has been enunciated time and again, and is not open for discussion in this court, as I take it.

As said in my brief in the Martinton case, the validity of these bonds may be considered as settled in *Concord* v. *Savings Bank*, 2 Otto, 629, the ground on which that case was reversed having been subsequently, in *Fairfield* v. *County of Gallatin*, 100 U. S. 47, overruled.

But when the court said: "A popular election having been held, and a majority of votes cast in favor of

"appropriation," it may be conceded that payment of the "appropriation could lawfully have been made in town "bonds, instead of money, if the donation itself was au- "thorized," it was not altogether in the line of the discussion in which the court was engaged; and we do not ask that the court be bound by it—still the announcement conformed with the current of the decisions of the court in similar cases.

I am entirely unable to comprehend why counsel has copied so extensively from the statutes of Illinois relative to the methods of holding elections and the township organization law. If these bondholders were bound to know that the election was called and conducted according to the provisions of the statute—which they were not—I do not see any material deviation from the statutory requirements in calling and holding the election of March 7, 1870, in the town of Sheldon. The third section of the act of March 24, 1869, gives some general directions about calling and holding elections, and these directions seem to have been carried out. But purchasers of this species of commercial paper are not charged with inquiring into such matters, and their consideration here is irrelevant.

Touching the constitutionality of these acts of 1869, what was said in *Fairbanks* v. *Martinton* is pertinent in these cases, and it would be useless to repeat the argument here.

Counsel, on pages 33, 34 and 35 of his Day brief, concedes that the act of March 24, 1869, appertains to these bonds, if an election is proven; but affirms that

purchasers of bonds were charged with finding out whether the election was called and held as provided by law, and he seeks to draw some distinction between a town or village acting under a charter, and a township acting under township organization. In Illinois the terms "town" and "township" are interchangeable. For purposes of conveyancing, the political divisions are called townships; "but when Iroquois County adopted township "organization," the corporate name of plaintiff in error became "The Town of Sheldon."

Rev. Stat. 1877, p. 1011, § 38.
Ibid. " " 1019, art. 11.

Throughout all our laws, public and private, the words are used interchangeably; and these bonds, on their face, are designated "township" bonds, when, more strictly speaking, they are "town" bonds, which distinction is noted in the declaration.

The purport of the argument seems to be that there was some irregularity in the conduct of the election, but from authorities cited in the brief, it is clear that holders of this class of securities are not required to look into the details of the election. In these suits, the certificate filed with the State Auditor before registry avers that the election was held, and this would have been sufficient to bind the town, as the act was done by an officer of the town, in the line of his duty, even if the certificate had been false in that regard, but being true, the town is concluded, and a recital of the fact on the face of the bond was not necessary.

Having noted the distinctions between these cases and the Martinton case, and relying upon the argument in the Martinton case as disposing of the principal issues in these cases, it is submitted that on the merits the judgments herein ought to be affirmed, should the court disregard the point that no inquiry can be made into the respective bills of exceptions because of no special findings, and pass upon the validity of the bonds in question upon the merits.

THOMAS S. MCCLELLAND,
Of Counsel for Defendants in Error.

GEO. A. SANDERS,
Attorney for Day and Fairbanks.

112-676

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 868.

THE TOWN OF SHELDON, PLAINTIFF IN ERROR,

vs.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JUNE 21, 1884.

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Act to assist construction, &c., Feb. 26, 1869	51	24
Act to assist construction, &c., March 24, 1869	53	25
Appeal Bond	58	28
Clerk's certificate	61	29
Writ of error	62	29
Citation	63	30

JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court rooms, in the city of Chicago, in the district aforesaid, before the Hon. John M. Harlan, one of the justices of the Supreme Court of the United States, and the Hon. Henry W. Blodgett, district judge of the United States for said northern district of Illinois, on Monday, the eighteenth day of February, A. D. 1884, in the December term of said court, in the year of our Lord one thousand eight hundred and eighty-three, and of our Independence the one hundred and eighth year.

WM. H. BRADLEY, *Clerk.*

J. H. FAIRBANKS
vs.
THE TOWN OF SHELDON. } 17585. Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the nineteenth day of September, A. D. 1881, came the plaintiff, by his attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his *præcipe* for a writ of summons, and also at the same time filed his bond for costs in said entitled cause, which said *præcipe* and bond are respectively in the words and figures following, to wit:

2 *Præcipe.*

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

Circuit Court. October Term, A. D. 1881.

J. H. FAIRBANKS
vs.
THE TOWN OF SHELDON, COUNTY OF IROQUOIS, ILLS. } In Assumpsit. Damages, $20,000.

The clerk will issue summons in the above-entitled cause, directed to the marshal of said district to execute, returnable as above at the October term, A. D. 1881.

SANDERS & WILLIAMS,
Plaintiff's Attorney.

Springfield, Sept. 17th, 1881.

Endorsed: Filed Sept. 19th, 1881. W. H. Bradley, clerk.

Bond for Costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

Circuit Court. October Term, A. D. 1881.

J. H. FAIRBANKS
vs.
THE TOWN OF SHELDON, COUNTY OF IROQUOIS, ILLS. } In Assumpsit, Damages, $20,000.

3 We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by us, and we hereby agree and stipulate that execution may issue against our property for any costs taxed against us.

Dated this 17th day of Sept., A. D. 1881.

SANDERS & WILLIAMS.
GEO. A. SANDERS.
FRANK P. WILLIAMS.

Endorsed: Filed Sept. 19th, A. D. 1881. W. H. Bradley, clerk.

On the same day, to wit, on the nineteenth day of September, A. D. 1881, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA, *Northern District of Illinois*, } ss:

The United States of America to the marshal of the northern district of Illinois, Greeting:

We command you to summon The Town of Sheldon, county of Iroquois, Ills., if found in your district, to be and appear be-
4 fore our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of October next, to answer unto J. H. Fairbanks of a plea of trespass on the case upon promises, to his damage, as it is alleged, of twenty thousand dollars; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 19th day of September, in the year of our Lord one thousand eight hundred and eighty-one, and of our Independence the 106th year.

[SEAL.] W. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within summons by reading the same to Barton Bishop, supervisor of The Town of Sheldon, Iroquois county, Illinois, and by delivering to him a true copy of this writ, on the 20th day of September, 1881.

A. M. JONES, *U. S. Marshal.*
By R. D. SHERMAN, *Dep't.*

Endorsed: Filed Oct. 1, A. D. 1881. W. H. Bradley, clerk.

5 Afterwards, to wit, on the twenty-second day of September,

A. D. 1881, came the plaintiff, by his attorneys, and filed in said clerk's office his declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

In the Circuit Court. October Term, A. D. 1881.

JOHN A. FAIRBANK
vs.
THE TOWNSHIP OF SHELDON. } Assumpsit.

And now comes the plaintiff, John H. Fairbank, a citizen of the State of Massachusetts, by Sanders and Williams, his attorneys, and complains of the defendant, a citizen of said district, of a plea of trespass on the case on promises, for that whereas the defendant heretofore, to wit, on the first day of June, A. D. 1870, at the district aforesaid, by its proper corporate authorities, made, executed, and delivered its certain six obligations commonly called bonds, by each of which said bonds The Township of Sheldon, defendant, acknowledges itself to owe and be indebted, and promises to pay to the bearer the sum of one thousand dollars at the Mechanics' National Bank, of Chicago, on the first day of June, A. D.
6 1881, with interest at the rate of ten per centum per annum, payable yearly on the first day of June of each year at the said bank on delivery of the warrants or coupons attached to said bond, each of said bonds bearing the signatures of A. B. Caldwell, supervisor, and D. W. Ayres, clerk, and being numbered 13, 17, 18, 19, 20, and 21, respectively; said bonds moreover being of the same form, tenor, and effect, except as to the numbers thereof, to wit, of the same form, tenor, and effect as bond No. 13, a copy of which appears below.

And as evidences of the interest due upon said bonds, the said township moreover executed and made its certain thirty-two obligations, commonly called coupons, by each of which said coupons said township promised to pay to the bearer, on the date therein specified, the sum of one hundred dollars at the Mechanics' National Bank, of the city of Chicago, as one year's interest upon the bond of corresponding number; said coupons being more particularly described as follows, to wit, six coupons from each of bonds Nos. 13 and 17 of series 5, 6, 7, 8, 9, 10, due June 1st, 1876, '77, '78, '79, '80, and '81, respectively.

Five coupons from each of bonds numbered eighteen (18), nineteen (19), twenty (20), twenty-one (21) of series six (6), seven (7), eight (8), nine (9), and ten (10), due June 1st, 1877, 1878, 1879, 1880,
1881, respectively; said coupons being each of the same form,
7 tenor, and affect, except as to the numbers and dates of maturity, to wit, of the same form, tenor, and effect as coupon number thirteen, series five (5), due June 1st, 1876, a copy of which appears below.

That plaintiff is the lawful holder and owner of said bonds and coupons.

By reason whereof, and by force of the statute in such case made, the defendant became indebted and liable to pay to the plaintiff the several sums secured by said bonds and coupons, and being so indebted the defendant at the time and place aforesaid promised to pay to the plaintiff the said sums according to the tenor and effect of said bonds and coupons.

And whereas also the defendant heretofore, to wit, on the first day of September, A. D. 1881, at the district aforesaid, was indebted to the plaintiff in the further sum of twenty thousand dollars for money before that time paid and expended by the plaintiff for the defendant at its request, and in the like sum for money before that time lent and advanced by the plaintiff to the defendant at its request, and in the like sum for money had and received by the defendant for the use of the plaintiff, and in the like sum for money before that time due as interest upon divers sums of money and foreborne by plaintiff to defendant for divers spaces of time at its request, and in the like sum for money found to be due plaintiff from defendant on an account then and there stated between them, in consid-
8 eration whereof defendant then and there promised to pay plaintiff the several sums aforesaid upon request.

Nevertheless, the defendant, though the time of payment in the said bonds and coupons specified has elapsed, has not paid to the plaintiff the several sums of money in the said bonds and coupons specified, nor any of them, nor any part thereof, but refuses so to do, nor has the defendant, though requested, paid to plaintiff the several other sums of money due as aforesaid, or any or either of them, or any part thereof, but refuses so to do, to plaintiff's damage of twenty thousand dollars, wherefore he brings his suit, etc.

SANDERS & WILLIAMS,
Attorneys for Plaintiffs.

Copy of Instrument and Account.

Coupon No. 13—Series 5.

Sheldon Township Railroad Bond.

$100. Interest Warrant. No. 13.

On the first day of June, 1876, the township of Sheldon, Iroquois county, State of Illinois, will pay to the bearer one hundred dollars at the Mechanics' National Bank, of the city of Chicago, being one year's interest on bond numbered as above.

A. B. CALDWELL, *Supervisor.*
D. W. AYRES, *Clerk.*

[Endorsed across the face in red ink:] 5.

Endorsed: Filed Sept. 22, 1881. W. H. Bradley, cl'k.

Afterwards, to wit, on the third day of October, A. D. 1881,
9 came the defendant, by its attorneys, and filed in said clerk's

office its plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In United States Circuit Court, Northern District of Ills. Oct. Term, A. D. 1881.

J. H. FAIRBANKS
vs.
TOWN OF SHELDON, IROQUOIS COUNTY, STATE OF ILLINOIS. } Assumpsit.

And said defendant, by Doyle & Morris, its attorneys, comes and defends the wrong and injury when, &c., and says that it did not undertake and promise in manner and form as is above alleged against it, and of this it puts itself upon the country.

DOYLE & MORRIS,
Att'ys for Def'ts.

And the plaintiff doth the like.

SANDERS & WILLIAMS,
For Pl'ff.

Endorsed: Filed Oct. 3, 1881. Wm. H. Bradley, clerk.

10 Afterwards, to wit, on the thirtieth day of June, in the adjourned May term of said court, A. D. 1882, in the record of the proceedings thereof in said entitled cause, before Hon. John M. Harlan, one of the justices of the Supreme Court, is the following entry, to wit:

J. H. FAIRBANKS
vs.
THE TOWN OF SHELDON. } Assumpsit.

Now come the parties, by their attorneys, and, upon issue joined by agreement of the parties by their attorneys, they waive the intervention of a jury, and for trial put themselves upon the court; and, after hearing the evidence and the arguments of counsel, the court takes the same under advisement.

11 Afterwards, to wit, on the tenth day of October, in the adjourned October term of said court, A. D. 1883, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

J. H. FAIRBANKS
vs.
THE TOWN OF SHELDON. } Assumpsit.

On motion of the plaintiff, by his attorneys, and with the consent of the attorneys for the defendant, leave is given him to amend his declaration herein.

12 On the same day, to wit, on the tenth day of October, A. D. 1883, came the plaintiff, by his attorneys, and filed in said clerk's office his amended declaration in said entitled cause, which said amended declaration is in the words and figures following, to wit:

Amended Declaration.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

Circuit Court of United States. October Term, A. D. 1883.

JOHN H. FAIRBANKS *vs.* THE TOWN OF SHELDON. } Ass't.

Now on this day comes said plaintiff, by his counsel, and by leave of court, first had and obtained, amends his declaration in said cause as follows, to wit:

1st. In 6th line of 1st page of said declaration the word "township" is changed to "town."

2d. In 12th line of 1st page, after the words "complains of," said plaintiff inserts the words "The Town of Sheldon, a body politic and corporate, a citizen of said State of Illinois, and located in Iroquois county, in said district."

3d. In the 14th line of said 1st page, after the word "defendant," said plaintiff inserts these words: "by the name and style of The Township of Sheldon."

13 4th. In the 15th line of said 1st page the year "1870" is changed to "1871."

5th. In 19th line of said 1st page the word "township" is changed to "town," and after the word "defendant." in same line, said plaintiff inserts the words "by the name and style of The Township of Sheldon as aforesaid."

6th. In the 4th line of 2d page of said declaration the word "township" is erased; the words "defendant by the name and style of The Township of Sheldon" inserted in lieu thereof.

7th. In 7th line of said 2d page the word "township" changed to "defendant by the name and style as aforesaid."

8th. On the 6th page of said declaration, at the conclusion of the copy of account sued on, and at the 14th line, said plaintiff inserts these words, to wit: "To amount due on the bonds of said town, $20,000. To amount due on the interest coupons of said town, $20,000."

9th. In the 2d line of said 6th page the word "township" is changed to "town."

THOMAS S. McCLELLAND
AND GEORGE A. SAUNDERS,
Att'ys for said Pl'ff.

We hereby consent and agree that the plea now on file in said

cause may stand as the plea to the declaration filed herein as amended.

THOS. S. McCLELLAND,
GEO. A. SANDERS,
Pl'ff's Att'ys.

Oct. 10, 1883.

Endorsed: Filed Oct. 10, 1883. Wm. H. Bradley, clerk.

14 Afterwards, to wit, on the sixteenth day of October, in the adjourned October term of said court, A. D. 1883, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

J. H. FAIRBANKS
vs.
THE TOWN OF SHELDON. } Assumpsit.

On motion of the plaintiff, by his attorneys, leave is given him to amend his declaration, and the amendment filed, and it is ordered that the plea on file stand to the declaration as amended.

On the same day, to wit, on the sixteenth day of October, A. D. 1883, came the plaintiff, by his attorneys, and filed in said clerk's office his amended declaration in said entitled cause, which said amended declaration is in the words and figures following, to wit:

Amended Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In Circuit Court of the United States. October Term, A. D. 1883.

JOHN H. FAIRBANKS
vs.
THE TOWN OF SHELDON. } Ass't. Gen. No. 17585.

15 Now on this day comes said plaintiff, by Thomas S. McClelland and George A. Sanders, his attorneys, and files this his amended engrossed declaration, by leave of court first had and obtained, to wit:

John H. Fairbanks, who is a citizen of the State of Massachusetts, the plaintiff in this case, by Thomas S. McClelland and George A. Sanders, his attorneys, complains of The Town of Sheldon, a body politic and corporate, a citizen of said State of Illinois, and located in Iroquois county, in said State, the defendant, of a plea of trespass on the case on promises, for that whereas said defendant, by the name and style of The Township of Sheldon, heretofore, to wit, on the first day of June, A. D. 1871, at the district aforesaid, by its proper corporate authorities, made, executed, and delivered its certain six obligations, commonly called bonds, by each of which said bonds the Town of Sheldon, by the name and style of The Township of Sheldon, as aforesaid, defendant, acknowledges itself to owe and be indebted, and promises to pay, to the bearer the sum of one

thousand dollars at the Mechanics' National Bank, of Chicago, on the first day of June, A. D., with interest at the rate of ten per centum per annum, payable yearly on the first day of June of each year at the said bank on delivery of the warrants or coupons attached to said bonds, each of said bonds bearing the signatures of A. B. Caldwell, supervisor, and D. W. Ayres, clerk, and being
16 numbered 13, 17, 18, 19, 20, and 21, respectively; said bonds moreover being of the same form, tenor, and effect, except as to the numbers thereof, to wit, of the same form, tenor, and effect as bond No. 13, a copy of which appears below.

And as evidences of the interest due upon said bonds, the said town, by the name and style of The Township of Sheldon, as aforesaid, moreover made, executed, and delivered its certain thirty-two obligations, commonly called coupons, by each of which said coupons said defendant, by the name and style as aforesaid, promised to pay to the bearer, on the date therein specified, the sum of one hundred dollars at the Mechanics' National Bank, of the city of Chicago, as one year's interest upon the bond of corresponding number; said coupons being more fully and particularly described as follows, to wit, six coupons attached to each of said bonds, numbers 13 and 17 of series 5, 6, 7, 8, 9, and 10, due June 1st, 1876, '77, '78, '79, '80, and '81, respectively.

Five coupons attached to each of bonds numbered eighteen (18), nineteen (19), twenty (20), and twenty-one (21) of series six (6), seven (7), eight (8), nine (9), and ten (10), due June 1st, 1877, 1878, 1879, 1880, 1881, respectively; said coupons being each of the same form, tenor, and effect as to the numbers and dates of maturity, to wit, of the same form, tenor, and effect as coupon number thirteen (13), series five (5), due June 1st, 1876, a copy of which appears
17 below.

That plaintiff is the lawful holder and owner of said bonds and coupons, and each and every of them, for a good and valuable consideration, purchased before the maturity thereof, and without notice of any defence to the same or any or either of them.

By reason whereof, and by force of the statute in such case made and provided, the defendant became indebted and liable to pay the plaintiff the several sums of money secured by said bonds and coupons, and, being so indebted, the defendant, at the time and place aforesaid, promised to pay the plaintiff the said sums of money according to the tenor and effect of said bonds and coupons.

And whereas also the defendant heretofore, to wit, on the first day of December, A. D. 1881, at the district aforesaid, was indebted to the plaintiff in the further sum of twenty thousand dollars for money before that time laid out and expended by the plaintiff for the defendant and at its request, and for the like sum for money before that time due as interest upon divers sums of money and foreborne by plaintiff to defendant for divers spaces of time at its request, and in the like sum for money found to be due plaintiff from defendant on an account then and there stated between them, in consideration whereof defendant then and there

promised to pay plaintiff the said several sums of money aforesaid upon request.

18 Nevertheless, the defendant, though the time of payment in the said bonds and coupons specified has elapsed, has not paid to the plaintiff the several sums of money in the said bonds and coupons specified, nor any or either of them, or any part thereof, but refuses so to to do, although often requested, to the damage of said plaintiff of twenty thousand dollars, wherefore he brings suit, &c.

THOMAS S. McCLELLAND,
GEORGE A. SANDERS,
Pl'ff's Att'ys.

Copy of Coupon No. 13, *Series* 5, *set out above.*

"Sheldon Township Railroad Bond.

"$100. Interest Warrant. No. 13.

"On the first day of June, 1876, the township of Sheldon, Iroquois county, State of Illinois, will pay to the bearer one hundred dollars at the Mechanics' National Bank, of the city of Chicago, being one year's interest on bond numbered as above.

"A. B CALDWELL, *Supervisor.*
"D. W. AYRES, *Clerk.*"

Copy of Bond No. 13.

"UNITED STATES OF AMERICA, *State of Illinois:*

"No. 13. Sheldon Township Railroad Bond. $1,000.

19 "Know all men by these presents, that the township of Sheldon, in the county of Iroquois, and State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said township of Sheldon promises to pay to the bearer at the Mechanics' National Bank, of Chicago, on the first day of June, in the year one thousand eight hundred and eighty-one, with interest thereon at the rate of ten per centum per annum, which interest shall be payable yearly on the first day of June in each year at the Mechanics' National Bank, of the city of Chicago, upon presentation of the warrants or coupons severally hereto annexed, until the payment of the said principal sum.

"This bond is issued under and by virtue of a law of the State of Illinois to authorize cities, towns, and townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad, and the faith of said township of Sheldon is hereby irrevocably pledged for the payment of said principal sum and interest as aforesaid.

"In witness whereof, the supervisor and clerk of said township of Sheldon have subscribed this bond this 1st day of June, one thousand eight hundred and seventy-one.

"A. B. CALDWELL, *Supervisor.*
"D. W. AYRES, *Clerk.*"

[Revenue stamps $1.00.]

[Endorsed across the face in red ink:] $1,000. One thousand dollars.

20 The Town of Sheldon to John H. Fairbanks, Dr.

To money paid and expended	$20,000
To money had and received, &c.	20,000
To money lent and advanced	20,000
To money due as interest	20,000
To money due on account stated	20,000
To amount due on bonds	20,000

Endorsed: Filed Oct. 16, 1883. Wm. H. Bradley, clerk.

21 Afterwards, to wit, on the eighteenth day of February, A. D. 1884, Judge Blodgett filed in said clerk's office his opinion in said entitled cause, which said opinion is in the words and figures following, to wit:

Opinion.

JOHN H. FAIRBANKS *vs.* TOWN OF SHELDON.

BLODGETT, J.:

This is a suit on six bonds of $1,000 each, dated June 1st, 1871, and due by their terms June 1st, 1881, with interest at the rate of ten per cent. per annum, said bonds having been issued by the defendant town to aid in the construction of the Chicago, Danville & Vincennes R. R., and also on 32 coupons of $100 for the interest maturing on said bonds for the years 1876 to 1881, inclusive. Each of these bonds contains a recital on its face that "it is issued under and by virtue of a law of the State of Illinois to authorize cities, towns, and townships lying within certain limits to appropriate moneys and levy taxes to and in the construction of the Chicago, Danville & Vincennes R. R., and the faith of the said town is hereby pledged for the payment of the said principal sum and interest as aforesaid."

22 The defenses set up are—

First. Want of power in the defendant town to issue these bonds.

Second. That the legal voters of the town, at a special town meeting called and held on the 7th of March, 1870, to vote to appropriate $25,000 to be donated to said railroad company, did so vote on condition that said road should be constructed and its trains running thereon from the city of Chicago into the plat of the village of Sheldon, and across the Toledo, Peoria & Warsaw R. R. within the limits of the then present depot grounds of the village of Sheldon, and that the condition on which said donation was voted has never been complied with, in this: That the railroad of the said Chicago, Danville & Vincennes R. R. Co. has never been built into or through said town, but, on the contrary, the line of said road is located and constructed more than five miles from the limits of said town at the nearest point thereto, and nine miles from the village

of Sheldon, where it was conditioned that it should be constructed before the bonds should become payable.

These bonds all have endorsed upon them a certificate of
23 the auditor of the State of Illinois, dated October 20, 1871, to the effect that they are duly registered in his office pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

The act under which these bonds were registered provides, among other things, that no bonds shall be registered under its provisions until the conditions precedent on which such bonds were voted shall have been complied with, and that the supervisor of the town issuing the bonds shall certify under oath that all the preliminary conditions required to be done to authorize the registration of said bonds had been complied with, and thereupon such bonds shall be subject to registration by the auditor, and the proof in this case shows that the supervisor of the defendant town, before said bonds were registered, did certify under oath, as required by said statute, that all the preliminary conditions had been complied with by the railroad company.

It is manifest, and, in fact, stipulated by counsel, that the laws of the State of Illinois referred to in the recital on the face of
24 these bonds is an act entitled "An act to authorize cities, towns, and townships lying within certain limits to appropriate moneys and levy taxes to aid in the construction of the Chicago, Danville, & Vincennes R. R.," approved March 7, 1867.

The first and second sections of this act read as follows:

"Be it enacted, etc., Sec. 1. That all incorporated towns and cities and towns acting under the township organization law, which lie wholly or partly within 20 miles of the west line of this State, and also between the city of Chicago and the southern boundary of Lawrence county, be, and the same are hereby, severally authorized to appropriate such sum of money as they may deem proper to the Chicago, Danville and Vincennes Railroad Company, to aid in the construction of the road of said company, to be paid to said company as soon as the track of said road shall have been located and constructed through said city, town, or township respectively: Provided, however, That the proposition to appropriate moneys to said company shall be first submitted to a vote of the legal voters of said respective townships, towns, or cities at a regular, annual, or special meeting by giving at least ten days' notice thereof,
and a vote shall be taken thereon by a ballot at the usual
25 place of election, and if the majority of the votes cast shall be in favor of the appropriation, then the same shall be made; otherwise, not.

"Sec. 2. The authorities of said townships, towns, or cities respectively are hereby authorized and required to levy and collect a tax, and make such provisions as may be necessary and proper for the prompt payment of the appropriation under the provisions of this law."

It will be seen that this act only authorizes towns, etc., within certain limits to appropriate money to aid in the construction of the said road, and authorizes and requires the levy and collection of taxes for the prompt payment of such appropriation as shall be made, and by its terms seem to limit the right to make such appropriation to towns through which the line of the said railroad is located and constructed, but by the second section of an act of the General Assembly of this State, approved March 24, 1869, entitled "An act to enable towns, townships, cities, and counties along the line of the Chicago, Danville & Vincennes R. R. to contribute towards the construction of said railroad," it is provided in section 2, "The legal voters of any town, township, or city along the line of
26 said railroad, whether said railroad shall run into or through said township or city or not, may, by a majority of the legal voters voting at any election held for the purpose, make an appropriation or donation to aid in the construction of said railroad, and the proper authorities shall levy and collect a tax in the manner that other taxes are levied and collected, to promptly meet any obligation assumed under and by virtue of this act."

The fourth section provides as follows:

SEC. 4. The authorities of any township, town, or city, such township, town, or city having voted to contribute aid in the construction of said railroad, may borrow money to promptly meet such contribution, and issue bonds of such township, town, or city at a rate of interest not exceeding ten per centum per annum, payable annually or semi-annually as they may deem best, and may negotiate the same on such terms as they may deem advisable, and may make the same payable at such place or places and payable at such time and times as they may deem for their best interests, and shall have power to levy and collect such taxes as may be necessary to pay accruing interest or pay the principal sum.

27 The acts of March 7, 1867, and March 24, 1869, above referred to, being in regard to the same subject-matter, are to be construed together, and by these two acts the grant of power to the defendant town to appropriate aid to the construction of this road, and to issue bonds in payment of such appropriation, seems amply sufficient.

The restrictions, or constructive restrictions, of such right of aid to towns through which the railroad is constructed is also removed by the act of 1869. Both these statutes were in force when the vote of the town was taken on the 7th of March, 1870, to appropriate $25,000 to aid in the construction of this road, so that at the time these bonds were voted for and issued there was power not only to donate or appropriate the money, but to issue bonds for the payment of such donation or appropriation. Each of these bonds bear on its face the recital that it is issued in pursuance of a law of the State of Illinois, as has been already said, this recital clearly refers to the act of March 7th, 1867, and necessarily implies that all the conditions required by such act, in order to make it a valid appro-

priation by the town, has been complied with, such as that
28 the proposition to make such appropriation or donation had been submitted to a vote of the legal voters of the town at an annual or special town meeting duly called, and that a majority of the votes had been cast in favor of such donation or appropriation, and the auditor's certificate given on each bond implies that all conditions precedent, on which such bonds were voted, had been complied with, because the evidence in this case shows that the proof required by the act of April 16th, 1869, as to the performance of the conditions precedent had been furnished to the auditor, and was on file in his office, with this ample power to issue these bonds and the recitals that appear upon their face, and the necessary implications from the auditor's certificate, and the admission in the record that the plaintiff is the owner and holder of these bonds, I am of opinion that neither of the defenses urged in this case can avail the defendant.

These bonds are the commercial paper of this defendant town; and while there is no express proof in the record that the plaintiff is a *bona fide* holder for value, yet the ordinary presumption of the law in regard to all commercial paper in the hands of the
29 holder is that it was negotiated before maturity and for value. This paper is made payable to bearer for the purpose of making it negotiable by delivery.

I do not, therefore, think it was necessary for the plaintiff to prove affirmatively what the law presumes, and, in the absence of proof to the contrary, must hold the plaintiff a *bona fide* holder for value.

The issues are found for the plaintiff.

Endorsed: Filed February 18th, 1884. Wm. H. Bradley, clerk.

30 On the same day, to wit, on the eighteenth day of February, 1884, in the December term of said court, A. D. 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

J. H. Fairbanks
vs.
The Town of Sheldon. } Assumpsit.

Now comes the plaintiff, by his attorney, and the court having considered and being now fully advised upon the matters heretofore submitted herein, finds the issue for the plaintiff, and assesses his damages at eleven thousand seven hundred and sixty-nine dollars. It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of eleven thousand seven hundred and sixty-nine dollars, his damages, together with his costs in this behalf expended, amounting to —— dollars and —— cents.

31 On the hearing of said cause, the following exceptions were taken and were allowed by the court and made of

record, which said exceptions are in the words and figures following, to wit:

Bill of Exceptions.

In United States Circuit Court, Northern District of Ills. March Term, 1884.

J. H. FAIRBANKS
vs.
TOWN OF SHELDON. } Assumpsit. No. 17585.

Be it remembered that on the trial of this cause by the court, a jury being waived by the parties, the following evidence was offered:

"*Bond.*"

UNITED STATES OF AMERICA, *State of Illinois:*

No. 13. Sheldon Township Railroad Bond. $1,000.

Know all men by these presents, that the township of Sheldon, in the county of Iroquois and State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said township of Sheldon promises to pay to the bearer at the Mechanics' National Bank, Chicago, on the first day of June, in the
32 years one thousand eight hundred and eighty-one, with interest thereon at the rate of ten per centum per annum, which interest shall be payable yearly on the first day of June in each year, at the Mechanics' National Bank, of the city of Chicago, upon presentation and delivery of the warrants or coupons severally hereto annexed until the payment of the said principal sum.

This bond is issued under and by virtue of a law of the State of Illinois to authorize cities, towns, or townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad, and the faith of said township of Sheldon is hereby pledged for the payment of said principal sum and interest as aforesaid.

In witness whereof, the supervisor and clerk of said Township of Sheldon have subscribed this bond, this 1st day of June, one thousand eight hundred and seventy-one.

A. B. CALDWELL, *Supervisor.*
D. W. AYRES, *Clerk.*

[Revenue stamp $1.00]

[Endorsed across face in red ink:] $1,000. One thousand dollars.

Endorsed on the back of said bond is the following:

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *October 20th*, 1871.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been reg-
33 istered in this office this day pursuant to the provisions of an act entitled "An act to fund and provide for paying the

railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

Judgment rendered on the within in the circuit court of the United States for the northern district of Illinois, Feb'y 18, 1884.
WM. H. BRADLEY, *Clerk.*

Coupon.

Sheldon Township Railroad Bond.

$100 Interest Warrant. No. 13.

On the first day of June, 1876, the Township of Sheldon, Iroquois county, State of Illinois, will pay to the bearer one hundred dollars, at the Mechanics' National Bank of the city of Chicago, being one year's interest on bond numbered as above.

A. B. CALDWELL, *Supervisor.*
D. W. AYRES, *Clerk.*

Endorsed: Judgment rendered on the within in the circuit court of the United States for the northern district of Illinois. Feb'y 18, 1884. Wm. H. Bradley, clerk.

[Endorsed across face in red ink:] 5.

34 Bonds number 17, 18, 19, 20, and 21 are identical with the above and foregoing bond No. 13 in every respect, except as to their numbers.

Copy of the above and foregoing coupon No. 13 is a *fac-simile* of the thirty-two coupons sued on, except as to their numbers and date of maturity, six of said coupons being numbered thirteen, and due respectively June 1, 1876, June 1, 1877, June 1, 1878, June 1, 1879, June 1, 1880, and June 1, 1881.

Six of said coupons being numbered seventeen, and due respectively June 1, 1876, June 1, 1877, June 1, 1878, June 1, 1879, June 1, 1880, and June 1, 1881.

Five of said coupons being numbered eighteen, and due respectively June 1, 1877, June 1, 1878, June 1, 1879, June 1, 1880, and June 1, 1881.

Five of said coupons being numbered nineteen, and due respectively June 1, 1877, June 1, 1878, June 1, 1879, June 1, 1880, and June 1, 1881.

Five of said coupons being numbered twenty, and due respectively June 1, 1877, June 1, 1878, June 1, 1879, June 1, 1880, and June 1, 1881.

And five of said coupons being numbered twenty-one, and due respectively June 1, 1877, June 1, 1878, June 1, 1879, June 1, 1880, and June 1, 1881.

35 *Stipulation Agreed Upon.*

United States Circuit Court, Northern District of Illinois.
Oct. Term, A. D. 1881.

JOHN H. FAIRBANK
vs.
THE TOWN OF SHELDON. } Assumpsit.

In this case it is hereby agreed and stipulated by and between Sanders and Williams, for plaintiff, and Doyle and Morris, for defendant, that John H. Fairbank is a citizen of Massachusetts, and that he is the owner and holder of the bonds and coupons described in the declaration in this case and offered in evidence, except what appears from the recitals and the law under which they were issued; that The Town of Sheldon is a corporation organized under the township laws of Illinois, and was such corporation at the time the bonds in controversy were issued, and have been such corporation since the year 1865, and is a citizen of the northern district of Illinois, in Iroquois county, Illinois; that the said bonds were signed by A. B. Caldwell, supervisor of the town of Sheldon, at the time he signed the bonds, and by D. W. Ayers, clerk; that D. W. Ayers was, at the time of signing the bonds and coupons, the clerk of the town of Sheldon, and that the signatures of A. B. Caldwell, supervisor, and D. W. Ayers, clerk, to the bonds and coupons are genuine.

36 That the law under which the bonds and coupons were issued is found in volume I of Private Laws of the State of Illinois, 1867, page 842, in force March 7, 1867.

That the copy of the bond in the declaration is a correct copy of the bond it purports to be a copy of, and a *fac-simile* of all the others save as to numbers thereof, and that the coupons in controversy are correctly described in the said declaration.

That the following is a correct copy of bond No. 18:

United States of America, State of Illinois.

No. 18. [Vignette.] $1,000.

Sheldon Township Railroad Bond.

Know all men by these presents, that the township of Sheldon, in the county of Iroquois, and State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said Township of Sheldon promises to pay to the bearer, at the Mechanics' National Bank, Chicago, on the first day of June, in the year one thousand eight hundred and eighty-one, with interest thereon at the rate of ten per cent. per annum, which interest shall be payable yearly, on the first day of June in each year, at the Mechanics' National Bank, of the city of Chicago, upon presentation and delivery of warrants or coupons, severally hereto annexed, until the payment of the said principal sum.

37 This bond is issued under and by virtue of a law of the State of Illinois to authorize cities, towns, or townships lying

within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad, and the faith of said township of Sheldon is hereby pledged for the payment of said principal sum and interest as aforesaid.

In witness whereof, the supervisor and clerk of said township of Sheldon have subscribed this bond, this 1st day of June, one thousand eight hundred and seventy-one.

A. B. CALDWELL, *Supervisor.*
D. W. AYERS, *Clerk.*

[Endorsed across the face in red ink:] One thousand dollars.

The following is a copy of coupon No. 18:

Sheldon Township Railroad Bond Interest Warrant.

$100. No. 18.

On the first day of June, 1881, the township of Sheldon, Iroquois county, State of Illinois, will pay to the bearer one hundred dollars at the Mechanics' National Bank, of the city of Chicago, being one year's interest on bond numbered as above.

A. B. CALDWELL, *Supervisor.*
D. W. AYRES, *Clerk.*

[Endorsed across the face in red ink:] 10.

All the other coupons are *fac-simile* of the above, save as to Nos., serial Nos., and date of payment.

38 That said bonds were registered in the office of the State auditor of Illinois and endorsed as follows:

"AUDITOR'S OFFICE,-ILLINOIS,
"SPRINGFIELD, *October* 20, 1871.

"I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled 'An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns,' in force April 16, 1869.

"In testimony whereof, I have hereunto subscribed my name and affixed the seal of my office, the day and year aforesaid.

[SEAL.] "C. E. LIPPINCOTT, *Auditor P. A.*"

That the affidavit of the supervisor who obtained the registry of the bonds of Sheldon Tp., $25,000, is in the words and figures following, and is a correct copy thereof:

STATE OF ILLINOIS,
COUNTY OF IROQUOIS, *October 19th*, 1871.

To the auditor of public accounts of the State of Illinois:

SIR: I hereby certify that the following-described bonds are entitled to registration in your office under the provisions of

39 the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in

force April 16th, 1869, the bonds being numbered from No. 1 to No. 25, incl., for $1,000 each, dated June 1st, 1871, and payable June 1st, 1881, being in all 25 bonds, and amounting to $25,000, and bearing interest at the rate of 10 per cent. per annum, payable annually on the 1st day of June.

These bonds are issued by the township of Sheldon, in the county of Iroquois, and State of Illinois, to the Chicago, Danville and Vincennes Railroad Company, under and by authority of the provisions of an act entitled "An act to authorize cities, towns, and townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville, and Vincennes railroad," approved March 7th, 1867, and by a vote of the people of said township, at an election held on the 7th day of March, 1870. And I, as supervisor of said township, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds, and to entitle them to the benefits of said act last referred to, have been fully complied with, to the best of my knowledge and belief.

A. B. CALDWELL,
Supervisor, Sheldon Township.

Subscribed and sworn to by the said Amos B. Caldwell before me, this 19th day of October, A. D. 1871.

D. W. AYERS, [L. S.]
Justice of the Peace.

40 AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *October 17th*, 1881.

I, Charles P. Swigert, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of certificate of A. B. Caldwell, as supervisor of Sheldon township (Iroquois Co.), in relation to registration of bonds issued by said township to the Chicago, Danville & Vincennes R. R. Co., now on file in, and forming part of, the records of this office.

In testimony whereof, I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[SEAL.]

CHAS. P. SWIGERT,
Auditor of Public Accounts.

Endorsed: Filed October 20, 1871. C. E. Lippincott, auditor public accounts.

Copies from the town clerk's records of the town of Sheldon, and from files in the county clerk's office of the county of Iroquois, Ills.

STATE OF ILLINOIS, }
County of Iroquois, } *ss.:*

At an election held at the school-house in the village of Sheldon, on the 23d day of November, A. D. 1869, pursuant to a call for a special election, to be held for the purpose of voting a tax to aid in the
41 construction of the Chicago, Danville & Vincennes railroad through the town of Sheldon, making the village of Sheldon a

point on the route of said road, there were one hundred and thirty-four (134) votes cast, said election resulting as follows:

For a tax of eighteen thousand ($18,000) dollars	81
Against tax	53
Majority in favor of tax	28

Signed at the village of Sheldon, this 23rd day of November, A. D. 1869.

A. G. WILLARD,
Judge of Election.
DANIEL W. AYERS,
Clerk of Election.

STATE OF ILLINOIS, }
Iroquois County, } ss:

I, Henry A. Butzow, county clerk of said Iroquois county, do hereby certify that the above is a true and correct copy of a return on an election now on file in my office.

Witness my hand and the seal of the county court of said county, this 27th day of September, A. D. 1881.

[SEAL.] HENRY A. BUTZOW, *Clerk.*

Endorsed: Filed Nov. 30, 1869. James W. Kay, clerk.

Election of March 7th, 1870. Page 25th of town records, on file in town clerk's office.

Copy of Notice of Election, M'ch 7th, 1870.

42 Whereas the supervisor, town clerk, and justice of the peace, together with twelve freeholders of the town of Sheldon, have, in writing, filed a statement that a special town meeting is necessary to the interests of said town, setting forth the object of the meeting:

The inhabitants, legal voters of said town of Sheldon, are therefore hereby notified that a special town meeting will be held at the school-house in Sheldon, on the 7th day of March, 1870, at 9 o'clock in the forenoon, for the purposes following, to wit: To vote for or against an appropriation by said town of the sum of twenty-five thousand ($25,000) dollars, to be donated to the Chicago, Danville & Vincennes R. R. Company to aid in the construction of said road.

Also for the purpose of making the appropriation of a sufficient amount, under direction of the town board of said town, to procure and furnish to said company the right of way for said road through said township of Sheldon, said appropriation to be made only upon condition that the said Chicago, Danville and Vincennes railroad be located and constructed and their trains running thereon from the city of Chicago and into the town plat of the village of Sheldon, and across the Toledo, Peoria & Warsaw railroad, within the limits of their present depot grounds, in said village of Sheldon, and upon the further express condition that this appropriation or donation shall be in lieu of any and all for-
43 mer appropriations made by said town to or for said Chicago,

Danville & Vincennes Railroad Company, being the objects contained in said statement filed in my office.

Given under my hand, at Sheldon, this 25th day of Feb'y, A. D. 1870.

D. W. AYERS, *Town Clerk.*

Copy of Results of Election of March 7th, 1870.

COUNTY OF IROQUOIS, *Town of Sheldon:*

At a special town meeting, held at the school-house in the village of Sheldon, on the 7th day of March, A. D. 1870, pursuant to a call for a special election, for the purpose of voting for or against an appropriation by said town of $25,000, to be donated to the Chicago, Danville & Vincennes railroad to aid in its construction; also for the purpose of making an appropriation of a sufficient amount, under the direction of the town board of said town, to procure and furnish to said railroad company the right of way for said road through the said township of Sheldon, upon conditions set forth in the application and election notices for said meeting, there were one hundred and thirty-nine votes cast, resulting as follows:

For appropriation	89
Against	50
Majority in favor of appropriation	39

Signed at the village of Sheldon, this 7th day of March, 1870.

CLARENCE B. WILLARD, *Moderator.*
D. W. AYERS, *Town Clerk.*

Copy of Acceptance of Donation by the Railroad Company.

To the supervisor and town clerk of the town *clerk of the town* of Sheldon, in the county of Iroquois, in the State of Illinois:

Whereas the said town of Sheldon did, on the 23d day of November, A. D. 1869, vote to donate the sum of eighteen thousand dollars, and on the 7th day of March, A. D. 1870, did vote to donate the sum of twenty-five thousand dollars, to aid the Chicago, Danville & Vincennes Railroad Company to construct their railroad:

Now, therefore, you are hereby notified that said railroad company do accept said offers and agreements of said town to aid them in the construction of said railroad; and you are further notified that they intend to construct their railroad through or into said town of Sheldon, in pursuance of the terms and conditions of each of said votes respectively, and shall demand and claim the amount of money so voted by said town.

BLADES & KAY,
Attorneys for Chicago, Danville & Vincennes R. R. Co.

Dated June 20, 1870.

Copy of Call for Election, July 18th, 1870.

To the town clerk of the town of Sheldon, in the county of Iroquois and State of Illinois:

The undersigned, citizens, legal voters and tax-payers, together with the supervisor and town clerk, request you to call an election
45 according to law for the purpose of permitting the legal voters of said town to vote for or against subscribing twenty-five thousand dollars to the capital stock of the Kankakee and Indiana Railroad Company, said twenty-five thousand dollars being in lieu of the twenty-five thousand dollars voted to the Chicago, Danville & Vincennes Railroad Company on the 7th day of March last, and on condition that the railroad of said company be built within the limits of the village of Sheldon, and that the said railroad company take the township bonds at par, said bonds to run ten years at 10 per cent. per annum. We would therefore request that said election be held on the 1st day of July, A. D. 1870.

Witness our hands this 30th day of May, A. D. 1870.

D. W. AYERS, *Town Clerk.*

A. B. Caldwell, supervisor, and twelve others sign this call.

Copy of the record of the election July 1, 1870, page 27, town records.

STATE OF ILLINOIS, *Iroquois County:*

I, D. W. Ayers, town clerk of the town of Sheldon, in said county and State, do hereby certify and state that in pursuance of a petition from twelve citizens of said town, together with the town clerk and supervisor, all of whom were legal voters of said town, filed in my office, according to an act of the General Assembly of the State
46 of Illinois, entitled An act to incorporate the Kankakee and Indiana Railroad Company, approved A. D. 1869, an election was duly held upon due notice at the school-house in the village of Sheldon, in said town, on the 1st day of July, A. D. 1870, according to the provisions of said act; and at said election there were cast eighty-two (82) votes for subscription of twenty-five thousand dollars ($25,000) to the capital stock of said company by said town, and thirteen (13) votes against the subscription of said capital stock, and that there was a majority of six'-nine (69) in favor of the subscription of said sum of twenty-five thousand dollars in the capital stock of said company cast at said election.

Signed at Sheldon, July 1st, 1870.

THOMAS FLOWERS, *Moderator.*
D. W. AYRES, *Town Clerk.*

That the bonds were signed by the supervisor and town clerk, on or about June 1, 1871, to the Chicago, Danville and Vincennes R. R. Co.; that jury is hereby waived, and trial by the court is agreed upon; that said bonds were issued under the law of March 7, 1867, Private Laws of Illinois, page 842, and it is agreed that any other law or laws pertinent to the issues in this case are considered in evidence.

It is further agreed, that any other evidence may be offered on the trial by either party that shall be pertinent to the issues herein.
Jan'y 2d, 1882.

DOYLE & MORRIS,
Att'ys for T'p.
SANDERS & WILLIAMS,
Att'ys for Pl'ff.

Endorsed: Filed Jan. 13, 1882. Wm. H. Bradley, clerk.

47 *Testimony of Henry Stearns.*

FAIRBANKS *v.* TOWN OF SHELDON.

Henry Stearns and Robert Caldwell, being sworn as witnesses in above cause, Henry Stearns stated as follows: That he was a resident of Iroquois Co., Ills., and had been for over fifteen years, and knew the location of Sheldon township, and the village of Sheldon, Ills., and also the location of the Chicago, Danville and Vincennes railroad, and that said railroad was built through the county of Iroquois in the years 1869, 1870, and 1871, and that the nearest point said road was built to said township of Sheldon was five miles, and the nearest point said road was built to the village of Sheldon was nine miles, and the road built through said village of Sheldon was the Chicago, Lafayette and Cincinnati railroad, and that it ran from Saint Anne, two miles north of the Iroquois Co. line, in a southeasterly direction, through said village of Sheldon, and that Joseph E. Young had a contract to grade said road, but that he never was the manager or had control of said Chicago, Lafayette, and Cincinnati railroad, but it was always controlled and run by the C., L. & C. R. R. Co., no ways connected with the Chicago, Danville and Vincennes Railroad Company.

48 It is admitted above in substance of said witnesses' testimony.

ROBERT DOYLE,
For Township.
SANDERS AND WILLIAMS,
Att'ys for Pl'ff.

Endorsed: Filed June 29th, '82. Wm. H. Bradley, clerk.

Also Section 1 *of Act of February* 16, 1865.

In force Feb. 16, 1865.

An act to incorporate the Chicago, Danville and Vincennes Railroad Company.

Corporators—Name and style—Powers—Single and double track—Route—Width of road.

SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That William D. Judson, Joseph E. Young, James M. Walker, Joseph Peters, John C. Short, Alvan Gilbert, C. A. Lake, James K. Richie, William Kile and their

associates, successors and assigns, are hereby created a body politic and corporate by the name and style of "The Chicago, Danville and Vincennes Railroad Company," with perpetual succession, and by that name be, and are hereby, made capable in law and equity to sue and be sued, plead and be impleaded, defend and be defended in any court of law and equity in this State, or any other place, to make and use a common seal, and the same to alter and renew at pleasure, and shall be, and are hereby vested with all powers, privileges, and immunities which are or may be necessary to carry into effect the purposes and objects of this act, as hereinafter set forth; and said company are hereby authorized and empowered to locate, construct, and complete a railroad, with a single or double track, from a point in Lawrence county on the Wabash river, opposite Vincennes, in the State of Indiana, upon the most eligible route to and into the city of Chicago, by way of Paris, in Edgar county, and Danville, in Vermillion county; and for this purpose the said company are authorized to lay out and locate their said road, not exceeding one hundred feet in width through the whole length of said route, and for the purpose of cuttings, embankments, stone and gravel may take and appropriate as much more land as may be necessary for the construction and security of said road.

Also Act of March 7th, 1867.

In force March 7, 1867.

An act to authorize cities, town, or townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad.

Payment of—Proviso.

SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That all incorporated towns and cities and towns acting under the township organization law, which lie wholly or partly within 20 miles of the east line of this State, and also between the city of Chicago and the southern boundary of Lawrence county, be, and the same are hereby, severally authorized to appropriate such sum of money as they may deem proper to the Chicago, Danville and Vincennes Railroad Company, to aid in the construction of the road of said company, to be paid to said company as soon as the track of said road shall have been located and constructed through said city, town, or township respectively: Provided, however, That the proposition to appropriate moneys to said company shall be first submitted to a vote of the legal voters of said respective townships, towns, or cities at a regular, annual or special meeting, by giving at least ten days' notice thereof, and a vote shall be taken thereon by a ballot at the usual place of election, and if the majority of the votes cast shall be in favor of the appropriation, then the same shall be made; otherwise, not.

Taxes.

SEC. 2. The authorities of said townships, towns, or cities respec-

tively are hereby authorized and required to levy and collect a tax, and make such provisions as may be necessary and proper for the prompt payment of the appropriation under the provisions of this law.

Taxes legalized and valid.

SEC. 3. And be it further enacted, That all the taxes heretofore voted in any and all of the townships, towns, or cities along the line of the aforesaid road, in aid of the construction of said road, are hereby legalized and declared valid.

Conditional votes.

SEC. 4. And be it further enacted, That any and all of said
51 townships, towns, or cities within the county of Iroquois and along said line of road as aforesaid, may vote for or against such taxes, conditioned that the town of Watseka, in said county, shall be made a point on said road, and in case a sufficient amount of such conditional taxes be voted in said Iroquois county to build the additional length of road required to make said town of Watseka a point in the same, then and in that case said road shall be so located as to run through or adjoining said town of Watseka.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved March 7, 1867.

Also Act of Feb'y 26, 1869.

In force Feb. 26, 1869.

An act to legalize certain aids heretofore voted and granted to aid in the construction of the Chicago, Danville, and Vincennes railroad.

Taxes—Appropriations.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the taxes, aids, and appropriations heretofore voted by towns, townships, or cities along the proposed route of the Chicago, Danville, and Vincennes railroad, or in the vicinity of said railroad, be, and the same are hereby, legalized, ratified, and confirmed, and the appropriation so made by the township of Yellowhead, in the county of Kankakee, on the 8th day of June, 1868, is hereby legalized and made valid: Provided, Said road shall run through said township of Yel-
52 lowhead. This section shall not apply to the townships of Butler, Georgetown, and Ellwood, in the county of Vermilion.

Liable to pay taxes.

SEC. 2. Said towns, townships, or cities shall be liable to pay said donations, aids, or appropriations upon the terms and conditions by them voted whenever said railroad shall be completed into or opposite to said towns, townships, or cities, as the case may be.

Levy taxes.

SEC. 3. For the purpose of facilitating the payment of the said aids, contributions, or appropriations, when the time of payment shall arrive, as hereinbefore provided, the proper authorities of said towns, cities, or townships are authorized and required to levy and collect a sufficient per cent. to meet and liquidate said aids, contributions, or appropriations; or said towns, cities, or townships may borrow money and issue bonds therefor for the purpose of paying said aids, which said bonds may be sold in or without this State, and at such prices as said towns, townships, or cities may deem for their best interests, and shall not bear a greater rate of interest than ten per centum per annum, and may provide that the interest be paid semi-annually, and may provide that principal and interest be paid in the city of Chicago, and said towns, townships, or cities shall have power to levy and collect taxes, as other taxes are levied and collected, to provide for the payment of accruing interest, and for the payment of the principal sum when it shall become due.

Action of supervisors legal.

SEC. 4. Be it further enacted, That a certain order or resolu-
53 tion of the board of supervisors of the county of Iroquois, passed by said board on the seventeenth (17) day of September, 1868, and a certain other order or resolution of said board, passed on the eighteenth (18) day of September, 1868, extending the aid or credit of said county to assist the Chicago, Danville and Vincennes Railroad Company in the construction of their said railroad, be, and the same are hereby, legalized, ratified, and confirmed; and said orders or resolutions shall be in full force and effect upon the terms and conditions in said orders or resolutions expressed.

SEC. 5. This act shall be a public act, and be in force from and after its passage.

Approved February 26, 1869.

Also Act of M'ch 24, 1869.

In force March 24, 1869.

An act to enable towns, townships, cities, or counties along the line of the Chicago, Danville and Vincennes Railroad to contribute toward the construction of said railroad.

Counties to aid railroad, etc.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the several counties through which the Chicago, Danville and Vincennes railroad shall pass are hereby authorized by action of the board of supervisors, or by action of the county court in counties not acting under township organization, to make appropriations or loan the credit of such county or counties in such sum or sums and upon such terms and con-
54 ditions as they may deem proper to extend and furnish aid to the Chicago, Danville and Vincennes Railroad Company in

constructing the said railroad: Provided, That the question as to whether such county or counties shall make such appropriation, or loan the credit of such county, as hereinbefore stated, be first submitted to the legal voters of such county by said board of supervisors or county court, as the case may be, at any regular or special election called for that purpose, twenty days' previous notice for which shall have been given, designating the amount proposed to be so contributed to said railroad, and a majority shall have voted for the same. The posting of said notices shall in other respects be regulated by the law now in force concerning the posting of notices for the election of county officers.

Submitted to legal voters.

SEC. 2. The legal voters of any town, township, or city along the line of said railroad, whether said railroad shall run into or through said town, township, or city or not, may, by a majority of the legal voters voting at any election held for the purpose, make appropriation or donation to aid in the construction of said railroad, and the proper authorities shall levy and collect taxes in the manner that other taxes are levied and collected, to promptly meet any obligation assumed under and by virtue of this act.

Contributions—Notice of election.

55 SEC. 3. Whenever any township shall desire to contribute toward the construction of said railroad, as provided in section two of this act, the vote may be taken at any regular or special meeting, and if at any special town meeting, may be called as now provided by law for such meetings; and whenever the voters of any town or city shall desire to contribute toward the construction of said railroad, a special election may be held by the proper authorities of any such town or city, upon giving ten days' notice in any newspaper published in such town or city, or by posting up written or printed notices in four public places in said town or city of the time, place, and object of such election, or such appropriation may be voted at any regular election in such town or city. The votes at any election held in any incorporated town or city, for the object herein mentioned, shall be canvassed and returned as at any other election in said town or city; and in all cases the notices given shall specify particularly the amount to be voted for or against at such election, and in no case shall the appropriation exceed the amount specified in the notice or notices.

May borrow money—Issue bonds.

SEC. 4. The authorities of any township, town, or city, such township, town, or city having voted to contribute aid in the construction of said railroad, may borrow money to promptly meet such contribution, and issue bonds of such township, town, or city at a rate
56 of interest not exceeding ten per centum per annum, payable annually or semi-annually as they may deem best, and may negotiate the same on such terms as they may deem advisable, and

may make the same payable at such place or places and payable at such time or times as they may deem for their best interests, and shall have power to levy and collect such taxes as may be necessary to pay accruing interest or pay the principal sum.

Payment on completion of road.

SEC. 5. In all cases when any township, town, or city shall have voted to contribute any aid, as hereinbefore provided, toward the construction of said railroad, the amount or amounts so voted shall become due and payable as soon as said railroad shall be completed into or opposite to any such township, town, or city.

Right of way.

SEC. 6. The authorities of any such township, town, or city may use and appropriate (of) the moneys hereinbefore provided to be raised for the purpose of procuring the right of way for said railroad company for their railroad in the county or counties where such township, town, or city shall be situated, and may authorize the collection of money for such purpose as soon as said railroad line shall be permanently located.

Validity of.

SEC. 7. Whatever any township, town, or city along the line of said railroad shall have heretofore done toward securing the right of way for said railroad is hereby ratified and declared to be valid.

57 Contributions ratified.

SEC. 8. All aids, contributions, or appropriations heretofore voted or ordered in the counties of Cook, Will, Kankakee, Iroquois, and Vermil-ion, either of townships, towns, cities, or counties, are hereby ratified and confirmed, upon the terms and conditions by them, or each of them, so voted or ordered: Provided, That this section shall not apply to the townships of Butler, Georgetown, and Ellwood, in the county of Vermil-ion, nor to the appropriation made by the county of Vermil-ion by its board of supervisors.

SEC. 9. This shall be a public act, and shall be in force from and after its passage.

Approved March 24, 1869.

Which was all the evidence offered in said cause. On which evidence the court found for the plaintiff in sum of $11,769, and entered judgment accordingly; to which finding and entering of judgment the said defendant then and there excepted. And as said facts do not appear of record the above bill of exceptions is presented, and we ask that it may, by the judge, be signed and sealed; which is done accordingly.

H. W. BLODGETT, *Judge*. [SEAL.]

Endorsed: Filed Feb'y 18, 1884. Wm. H. Bradley, clerk.

58 Afterwards, to wit, on the sixteenth day of April, A. D. 1884, there was filed in said clerk's office an appeal bond in said entitled cause, which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents, that the town of Sheldon, Iroquois county, and State of Illinois, as principal, and Herman W. Snow, O. Bush, W. B. Fleager, Stephen Buckley, W. E. Julien, John Fleming, Jr., and J. R. Russell, of said town, as security, are held and firmly bound unto J. H. Fairbanks, and to his heirs and assigns, in the penal sum of one thousand dollars, good and lawful money of the United States of America, for the payment of which, well and truly to be made, we, the said town, and its successors, and we, the said sureties, and our heirs, executors, administrators, and assigns, firmly bind by these presents. Witness our hands and seals, this 28 day of April, A. D. 1884.

The condition of the above obligation is such, that whereas the said J. H. Fairbanks, at the March term of the circuit court of the United States for the northern district of Illinois, did obtain a judgment against said town of Sheldon for the sum of eleven thousand seven hundred and sixty-nine dollars, and costs of suit, from which judgment said town has sued out a writ of error to the Supreme Court of the United States, which writ of error has been made a supersedeas on filing this bond:

59 Now, therefore, if said town shall prosecute said writ of error without delay, and reverse said judgment aforesaid, or if said judgment of said circuit court shall be affirmed in said Supreme Court, shall pay the costs of said suit and all the just damages for delay, and all costs and interest on said writ of error or appeal, then this obligation to be void; otherwise to remain in full force and virtue.

B. BISHOP, *Supervisor.*
HERMAN W. SNOW. [SEAL.]
O. BUSH. [SEAL.]
W. B. FLEAGER. [SEAL.]
STEPHEN BUCKLEY. [SEAL.]
W. E. JULIEN. [SEAL.]
JOHN FLEMING, JR. [SEAL.]
J. R. RUSSELL. [SEAL.]

STATE OF ILLINOIS, } ss:
Iroquois County, }

I, Robert Caldwell, a notary public in and for said county and State aforesaid, do hereby certify that Barton Bishop, supervisor, O. Bush, W. B. Fleager, Herman W. Snow, Stephen Buckley, Wm. E. Julien, John Fleming, Jr., & J. R. Russell, whose names appear on the within bond, was signed in my presence, and acknowledged before me this May 5th, 1884.

[SEAL.] ROBERT CALDWELL,
Notary Public.

A. B. Caldwell, being duly sworn, doth depose and say: That he is acquainted with each of the signers, to wit, Herman
60 W. Snow, O. Bush, W. B. Fleager, Stephen Buckley, W. E. Julien, John Fleming, Jr., J. R. Russell, and that each of said parties are worth in real and personal property in the town of Sheldon above exemptions more than two thousand dollars.

A. B. CALDWELL.

Subscribed and sworn to before me, Robert Caldwell, this fifth day of May, A. D. 1884.

[SEAL.] ROBERT CALDWELL,
Notary Public.

The above bond is satisfactory as to the responsibility of the sureties, but it is not satisfactory as to the form and amount of the penalty.

THOMAS S. McCLELLAND,
Att'y for Pl'ff.

Approved:
H. W. BLODGETT, *Judge.*

Endorsed: Filed April 16, 1884. W. H. Bradley, clerk.

61 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court, in the cause wherein J. H. Fairbanks is the plaintiff and The Town of Sheldon is the defendant, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this fifteenth day of May, A. D. 1884.

[SEAL.] WM. H. BRADLEY, *Clerk.*

62 UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court, between J. H. Fairbanks, plaintiff, and The Town of Sheldon, defendant, in an action of assumpsit, a manifest error hath happened, to the great damage of the said town of Sheldon, defendant, as by its complaint appears, and it is being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all

things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1884, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this tenth day of April, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the 108th year.

[SEAL.] W. H. BRADLEY, *Clerk.*

62½ [Endorsed:] Supreme Court of the United States. The Town of Sheldon, plaintiff in error, *vs.* J. H. Fairbanks, def't in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S. northern district of Illinois.

63 UNITED STATES OF AMERICA, } ss.
Northern District of Illinois, }

To J. H. Fairbanks, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 1884, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein J. H. Fairbanks is plaintiff and The Town of Sheldon is defendant, to show cause, if any there be, why the judgment in said cause mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, this 11th day of April, in the year of our Lord one thousand eight hundred and eighty-four.

H. W. BLODGETT, *Judge.*

Service of above citation accepted this April 14, 1884.

THOS. S. McCLELLAND,
Att'y for Fairbanks.

64 [Endorsed:] Supreme Court of the United States. J. H. Fairbanks *vs.* The Town of Sheldon. Citation to October term, A. D. 1884.

Endorsed on cover: N. Illinois C. C. U. S. No. 868. The Town of Sheldon, plaintiff in error, *vs.* J. H. Fairbanks. Filed 21st June, 1884.

112-676

OFFICE SUPREME COURT U. S.
FILED
OCT 20 1884
JAMES H. McKENNEY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1884.

THE TOWN OF SHELDON,
Plaintiff in Error,
v.
J. H. FAIRBANKS,
Defendant in Error.
} No. 868.

ERROR TO THE CIRCUIT COURT OF THE NORTHERN DISTRICT OF ILLINOIS.

Filed October_____ A. D. 1884.

_____ *Clerk.*

DOYLE, MORRIS & PIERSON,
Attorneys for Town.

Robert Doyle,
Counsel.

Republican Print, Watseka, Ill.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 868.

THE TOWN OF SHELDON, PLAINTIFF IN ERROR,

vs.

J. H. FAIRBANKS, DEFENDANT IN ERROR.

ERROR TO THE CIRCUIT COURT OF THE NORTHERN DISTRICT OF ILLINOIS.

STATEMENT OF THE CASE.

The Plaintiff in error is a municipal corporation organized under the Township Organization Law of the State of Illinois for the purpose of local government, with certain limited powers, and forming part of the territorial divisions of the County of Iroquois and State of Illinois.

This was a suit brought by plaintiff as the owner on bonds numbered 13, 17, 18, 19, 20 and 21, each for $1,000, dated June 1st, 1871, and due June 1st, 1881, with interest

at 10 per cent. as evidenced by coupons thereto attached. Also on 32 coupons of $100 each, as follows:

Six coupons each on bonds 13 and 17, due June 1st, 1876, '77, '78, '79, '80 and '81.

Five coupons each on bonds 18, 19, 20, and 21 due June 1st, 1877, '78, '79, '80, and '81, as by special counts thereon. Each of said bonds were similar to bond 13 and coupon 13, except as to date when due, to-wit:

No. 13.

"UNITED STATES OF AMERICA, *State of Illinois:*

"No. 13. Sheldon Township Railroad Bond. $1,000.

"Know all men by these presents, that the township of Sheldon, in the County of Iroquois and State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said township of Sheldon promises to pay to the bearer at the Mechanic's National Bank, of Chicago, on the first day of June, in the year one thousand, eight hundred and eighty-one, with interest thereon at the rate of ten per cent. per annum which interest shall be payable yearly on the first day of June in each year at the Mechanic's National Bank of the city of Chicago upon presentation of the warrants or coupons severally hereto annexed until the payment of the said principal sum.

"This bond is issued under and by virtue of a law of the State of Illinois to authorize cities, towns and townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes Railroad, and the faith of said township of Sheldon is hereby irrevocably pledged for the payment of said principal sum and interest as aforesaid.

"In witness whereof the Supervisor and Clerk of said township of Sheldon have subscribed this bond this 1st day of June, one thousand, eight hundred and seventy-one.

"A. B. CALDWELL, *Supervisor.*

"D. W. AYERS, *Clerk.*"

[Revenue stamp $1.00.]

"SHELDON TOWNSHIP RAILROAD BOND.

"$100 Interest Warrant. No. 13.

"On the first day of June, 1876, the township of Sheldon, Iroquois County, State of Illinois, will pay to the bearer one hundred dollars at the Mechanic's National Bank of the city of Chicago, being one year's interest on bond numbered as above.

"A. B. CALDWELL, *Supervisor.*

"D. W. AYERS, *Clerk.*"

It was agreed by counsel that said bonds and coupons were issued under act of March 7th, 1867, found in Private Laws of the State of Illinois, Volume 1, Page 842.

Bonds were registered in Auditor's Office of the State of Illinois October 20th, 1871. The affidavit to entitle them to registration being made October 19th, 1871, by A. B. Caldwell, the Supervisor.

March 7th, 1870, there was an election held in the town of Sheldon to vote an appropriation of $25,000 to be donated to the C., D. & V. R. R. Co. on condition said railroad be located and constructed and their trains running thereon from Chicago into the town plat of village of Sheldon and across the Toledo, Peoria & Warsaw Railroad, within the limits of its present depot grounds in said village, and on the further condition this be in lieu of all other appropriations to said railroad company, which carried by a vote of 89 to 50.

On June 20th, 1870, said railroad company by its attorneys, Blades & Kay, notified the Supervisor and Clerk of the town of Sheldon that the company accepted said donation, and intended to build its road through Sheldon in pursuance of the conditions voted.

That the bonds and coupons were signed by Supervisor and Clerk to the C., D. & V. R. R. Co., about June 1st, 1871.

The above was all the election held in said town to vote aid to a railroad company except one held on July 1st, 1870, to vote a subscription of $25,000 to the stock of the Kankakee and Indiana Railroad Company in lieu of the $25,000 to the C., D. & V. R. R. Co. above, which election carried by a vote of 82 to 13, but which has nothing to do with bonds and coupons sued on, as it is an entirely different act, and the act of the Kankakee and Indiana Railroad Company has never been complied with.

It was proven on trial that the Chicago, Danville and Vincennes Railroad was built through Iroquois County, Illinois, in the years 1869, 1870 and 1871, and the nearest point it was built to said town of Sheldon was five miles, and the nearest point to the village of Sheldon was nine miles, and the road built through the village of Sheldon was the Chicago, Lafayette & Cincinnati Railroad, and that road never had any connection with the C., D. & V. Railroad Company.

The following acts and parts of acts were read in evidence.

Section 1 of Act of February 16th, 1865.

In force February 16th, 1865.

An act to incorporate the Chicago, Danville and Vincennes Railroad Company.

Corporators—Name and style—Powers—Single and double track—Route—Width of road.

SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That William D. Judson, Joseph E. Young, James M. Walker, Joseph Peters, John C. Short, Alvan Gilbert, C. A. Lake, James K. Richie, William Kile and their associates, successors and assigns, are hereby created a body politic and corporate by the name and style of "The Chicago, Danville and Vincennes Railroad Company," with perpetual succession, and by that name be, and are hereby, made capable in law and equity to sue and be sued, plead and be impleaded, defend and be defended in any court of law and equity in this State, or any other place, to make and use a common seal, and the same to alter and renew at pleasure, and shall be, and are hereby vested with all powers, privileges, and immunities which are or may be necessary to carry into effect the purposes and objects of this act, as hereinafter set forth; and said company are hereby authorized and empowered to locate, construct, and complete a railroad, with a single or double track, from a point in Lawrence county on the Wabash river, opposite Vincennes, in the State of Indiana, upon the most eligible route to and into the city of Chicago, by way of Paris, in Edgar county, and Danville, in Vermilion county; and for this purpose the said company are authorized to lay out and locate their said road, not exceeding one hundred feet in width through the whole length of said route, and for the purpose of cutting, embankments, stone and gravel may take and appropriate as much more land as may be necessary for the construction and security of said road.

Also Act of March 7th, 1867.

In force March 7, 1867.

An act to authorize cities, towns or townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes Railroad.

Payment of—Proviso.

SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That all incorporated towns and cities and towns acting under the Township Organization Law, wnich lie wholly or partly within 20 miles of the east line of this State, and also between the city of Chicago and the southern boundary of Lawrence county, be, and the same are hereby, severally authorized to appropriate such sum of money as they may deem proper to the Chicago, Danville and Vincennes Railroad Company, to aid in the construction of the road of said company, to be paid to said company as soon as the track of said road shall have been located and constructed through said city, town or township respectively: Provided, however, That the proposition to appropriate moneys to said company shall be first submitted to a vote of the legal voters of said respective townships, towns, or cities at a regular, annual or special meeting, by giving at least ten days' notice thereof, and a vote shall be taken thereon by a ballot at the usual place of election, and if the majority of the votes cast shall be in favor of the appropriation, then the same shall be made; otherwise, not.

Taxes.

SECTION 2. The authorities of said townships, towns, or cities respectively are hereby authorized and required to levy and collect a tax, and make such provisions as may be

necessary and proper for the prompt payment of the appropriation under the provisions of this law.

Taxes legalized and valid.

SECTION 3. And be it further enacted, That all the taxes heretofore voted in any and all of the townships, towns, or cities along the line of the aforesaid road, in aid of the construction of said road, are hereby legalized and declared valid.

Conditional votes.

SECTION 4. And be it further enacted, That any and all of said townships, towns or cities within the county of Iroquois and along said line of road as aforesaid, may vote for or against such taxes, conditioned that the town of Watseka, in said county, shall be made a point on said road, and in case a sufficient amount of such conditional taxes be voted in said Iroquois county to build the additional length of road required to make said town of Watseka a point in the same, then and in that case said road shall be so located as to run through or adjoining said town of Watseka.

SECTION 5. This act shall take effect and be in force from and after its passage.

Approved March 7th, 1867.

Also Act of February 26th, 1869.

In force February 26th, 1869.

An act to legalize certain aids heretofore voted and granted to aid in the construction of the Chicago, Danville and Vincennes Railroad.

Taxes—Appropriations.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the taxes, aids, and appropriations heretofore voted by towns,

townships, or cities along the proposed route of the Chicago, Danville and Vincennes Railroad, or in the vicinity of said railroad, be, and the same are hereby legalized, ratified, and confirmed, and the appropriation so made by the township of Yellowhead, in the county of Kankakee, on the 8th day of June, 1868, is hereby legalized and made valid: Provided, Said road shall run through said township of Yellowhead. This section shall not apply to the townships of Butler, Georgetown, and Ellwood, in the county of Vermilion.

Liable to pay taxes.

SECTION 2. Said towns, townships, or cities shall be liable to pay said donations, aids, or appropriations upon the terms and conditions by them voted whenever said railroad shall be completed into or opposite to said towns, townships, or cities, as the case may be.

Levy taxes.

SECTION 3. For the purpose of facilitating the payment of the said aids, contributions, or appropriations, when the time of payment shall arrive, as hereinbefore provided, the proper authorities of said towns, cities, or townships are authorized and required to levy and collect a sufficient per cent. to meet and liquidate said aids, contributions, or appropriations; or said towns, cities or townships may borrow money and issue bonds therefor for the purpose of paying said aids, which said bonds may be sold in or without this State, and at such prices as said towns, townships, or cities may deem for their best interests, and shall not bear a greater rate of interest than ten per centum per annum, and may provide that the interest be paid semi-annually, and may provide that principal and interest be paid in the city of Chicago, and said towns, townships, or

cities shall have power to levy and collect taxes, as other taxes are levied and collected, to provide for the payment of accruing interest, and for the payment of the principal sum when it shall become due.

Action of supervisors legal.

SECTION 4. Be it further enacted, That a certain order or resolution of the Board of Supervisors of the county of Iroquois, passed by said Board on the seventeenth (17) day of September, 1868, and a certain other order or resolution of said Board, passed on the eighteenth (18) day of September, 1868, extending the aid or credit of said county to assist the Chicago, Danville and Vincennes Railroad Company in the construction of their said railroad, be, and the same are hereby legalized, ratified, and confirmed; and said orders or resolutions shall be in full force and effect upon the terms and conditions in said orders or resolutions expressed.

SECTION 5. This act shall be a public act, and be in force from and after its passage.

Approved February 26th, 1869.

Also Act of March 24th, 1869.

In force March 24th, 1869.

An act to enable towns, townships, cities, or counties along the line of the Chicago, Danville and Vincennes Railroad to contribute toward the construction of said railroad.

Counties to aid railroad, etc.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the several counties through which the Chicago, Danville and Vincennes Railroad shall pass are hereby authorized by action of the Board of Supervisors, or by action of the

County Court in counties not acting under township organization, to make appropriations or loan the credit of such county or counties in such sum or sums and upon such terms and conditions as they may deem proper to extend and furnish aid to the Chicago, Danville and Vincennes Railroad Company in constructing the said railroad: Provided, That the question as to whether such county or counties shall make such appropriation, or loan the credit of such county, as hereinbefore stated, be first submitted to the legal voters of such county by said Board of Supervisors or County Court, as the case may be, at any regular or special election called for that purpose, twenty days' previous notice for which shall have been given, designating the amount proposed to be so contributed to said railroad, and a majority shall have voted for the same. The posting of said notices shall in other respects be regulated by the law now in force concerning the posting of notices for the election of county officers.

Submitted to legal voters.

SECTION 2. The legal voters of any town, township or city along the line of said railroad, whether said railroad shall run into or through said town, township or city or not, may, by a majority of the legal voters voting at any election held for the purpose, make appropriation or donation to aid in the construction of said railroad, and the proper authorities shall levy and collect taxes in the manner that other taxes are levied and collected, to promptly meet any obligation assumed under and by virtue of this act.

Contributions—Notice of election.

SECTION 3. Whenever any township shall desire to contribute toward the construction of said railroad, as pro-

vided in section two of this act, the vote may be taken at any regular or special meeting, and if at any special town meeting, may be called as now provided by law for such meetings; and whenever the voters of any town or city shall desire to contribute toward the construction of said railroad, a special election may be held by the proper authorities of any such town or city, upon giving ten days' notice in any newspaper published in such town or city, or by posting up written or printed notices in four public places in said town or city of the time, place and object of such election, or such appropriation may be voted at any regular election in such town or city. The votes at any election held in any incorporated town or city, for the object herein mentioned, shall be canvassed and returned as at any other election in said town or city; and in all cases the notices given shall specify particularly the amount to be voted for or against at such election, and in no case shall the appropriation exceed the amount specified in the notice or notices.

May borrow money—Issue bonds.

SECTION 4. The authorities of any township, town or city, such township, town or city having voted to contribute aid in the construction of said railroad, may borrow money to promptly meet such contribution, and issue bonds of such township, town or city at a rate of interest not exceeding ten per centum per annum, payable annually or semi-annually as they may deem best, and may negotiate the same on such terms as they may deem advisable, and may make the same payable at such place or places and payable at such time or times as they may deem for their best interests, and shall have power to levy and col-

lect such taxes as may be necessary to pay accruing interest or pay the principal sum.

Payment on completion of road.

SECTION 5. In all cases when any township, town or city shall have voted to contribute any aid. as hereinbefore provided, toward the construction of said railroad, the amount or amounts so voted shall become due and payable as soon as said railroad shall be completed into or opposite to any such township, town or city.

Right of way.

SECTION 6. The authorities of any such township, town or city may use and appropriate (of) the moneys hereinbefore provided to be raised for the purpose of procuring the right of way for said railroad company for their railroad in the county or counties where such township, town or city shall be situated, and may authorize the collection of money for such purpose as soon as said railroad line shall be permanently located.

Validity of.

SECTION 7. Whatever any township, town or city along the line of said railroad shall have heretofore done towards securing the right of way for said railroad is hereby ratified and declared to be valid.

Contributions ratified.

SECTION 8. All aids, contributions, or appropriations heretofore voted or ordered in the counties of Cook, Will, Kankakee, Iroquois and Vermilion, either of townships, towns, cities or counties, are hereby ratified and confirmed, upon the terms and conditions by them, or each of them, so voted or ordered; Provided, That this section shall not apply to the townships of Butler, Georgetown and Ellwood,

in the couty of Vermilion, nor to the appropriation matle by the county of Vermilion by its Board of Supervisors.

SECTION 9. This shall be a public act, and shall be in force from and after its passage.

Approved March 24th, 1869.

On above facts Court found as follows:

This is a suit on six bonds of $1,000 each, dated June 1st, 1871, and due by their terms June 1st, 1881, with interest at the rate of ten per cent. per annum, said bonds having been issued by the defendant town to aid in the construction of the Chicago, Danville and Vincennes Railroad, and also on 32 coupons of $100 for the interest maturing on said bonds for the years 1876 to 1881, inclusive. Each of these bonds contains a recital on its face that "it is issued under and by virtue of a law of the State of Illinois to authorize cities, towns and townships lying within certain limits to appropriate moneys and levy taxes to and in the construction of the Chicago, Danville and Vincennes Railroad, and the faith of the said town is hereby pledged for the payment of the said principal sum and interest as aforesaid."

The defenses set up are—

First. Want of power in the defendant town to issue these bonds.

Second. That the legal voters of the town, at a special town meeting called and held on the 7th of March, 1870, to vote to appropriate $25,000 to be donated to said railroad company, did so vote on condition that said road should be constructed and its trains running thereon from the city of Chicago into the plat of the village of Sheldon, and across the Toledo, Peoria and Warsaw Railroad within the limits of the then present depot grounds of the village of Sheldon,

and that the condition on which said donation was voted has never been complied with, in this : That the railroad of the said Chicago, Danville and Vincennes Railroad Company has never been built into or through said town, but, on the contrary, the line of said road is located and constructed more than five miles from the limits of said town at the nearest point thereto, and nine miles from the village of Sheldon, where it was conditioned that it should be constructed before the bonds should become payable.

These bonds all have endorsed upon them a certificate of the auditor of the State of Illinois, dated October 20th, 1871, to the effect that they are duly registered in his office pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities and towns," in force April 16th, 1869.

The act under which these bonds were registered provides, among other things, that no bonds shall be registered under its provisions until the conditions precedent on which such bonds were voted shall have been complied with, and that the Supervisor of the town issuing the bonds shall certify under oath that all the preliminary conditions required to be done to authorize the registration of said bonds had been complied with, and thereupon such bonds shall be subject to registration by the auditor, and the proof in this case shows that the Supervisor of the defendant town, before said bonds were registered, did certify under oath, as required by said statute, that all the preliminary conditions had been complied with by the railroad company.

It is manifest, and, in fact, stipulated by counsel, that the laws of the State of Illinois referred to in the recital on the face of these bonds is an act entitled "An act to authorize cities, towns and townships lying within certain limits

to appropriate moneys and levy taxes to aid in the construction of the Chicago, Danville and Vincennes Railroad," approved March 7th, 1867.

The first and second sections of this act read as follows:

"Be it enacted, etc., Sec. 1. That all incorporated towns and cities and towns acting under the Township Organization law, which lie wholly or partly within 20 miles of the west line of this State, and also between the city of Chicago and the southern boundary of Lawrence county, be, and the same are hereby, severally authorized to appropriate such sum of money as they may deem proper to the Chicago, Danville and Vincennes Railroad Company, to aid in the construction of the road of said company, to be paid to said company as soon as the track of said road shall have been located and constructed through said city, town or township respectively: Provided, however, That the proposition to appropriate moneys to said company shall be first submitted to a vote of the legal voters of said respective townships, towns, or cities at a regular, annual or special meeting by giving at least ten days' notice thereof, and a vote shall be taken thereon by a ballot at the usual place of election, and if the majority of the votes cast shall be in favor of the appropriation, then the same shall be made; otherwise, not.

"SECTION 2. The authorities of said townships, towns or cities respectively are hereby authorized and required to levy and collect a tax, and make such provisions as may be necessary and proper for the prompt payment of the appropriation under the provisions of this law."

It will be seen that this act only authorizes towns, etc., within certain limits to appropriate money to aid in the construction of the said road, and authorizes and requires

the levy and collection of taxes for the prompt payment of such appropriation as shall be made, and by its terms seem to limit the right to make such appropriation to towns through which the line of the said railroad is located and constructed, but by the second section of an act of the General Assembly of this State, approved March 24th, 1869, entitled, "An act to enable towns, townships, cities and counties along the line of the Chicago, Danville and Vincennes Railroad to contribute toward the construction of said railroad," it is provided in Section 2, "The legal voters of any town, township, or city along the line of said railroad, whether said railroad shall run into or through said township or city or not, may, by a majority of the legal voters voting at any election held for the purpose, make an appropriation or donation to aid in the construction of said railroad, and the proper authorities shall levy and collect a tax in the manner that other taxes are levied and collected, to promptly meet any obligation assumed under and by virtue of this act."

The fourth section provides as follows:

SECTION 4. The authorities of any township, town or city, such township, town or city having voted to contribute aid in the construction of said railroad, may borrow money to promptly meet such contribution, and issue bonds of such township, town or city at a rate of interest not exceeding ten per centum per annum, payable annually or semi-annually as they may deem best, and may negotiate the same on such terms as they may deem advisable, and may make the same payable at such place or places and payable at such time and times as they may deem for their best interests, and shall have power to levy and collect such

taxes as may be necessary to pay accruing interest or pay the principal sum.

The acts of March 7th, 1867, and March 24th, 1869, above referred to, being in regard to the same subject-matter, are to be constructed together, and by these two acts the grant of power to the defendant town to appropriate aid to the construction of this road, and to issue bonds in payment of such appropriation, seems amply sufficient.

The restrictions, or constructive restrictions, of such right of aid to towns through which the railroad is constructed is also removed by the act of 1869. Both these statutes were in force when the vote of the town was taken on the 7th of March, 1870, to appropriate $25,000 to aid in the construction of this road, so that at the time these bonds were voted for and issued there was power not only to donate or appropriate the money, but to issue bonds for the payment of such donation or appropriation. Each of these bonds bearing on its face the recital that it is issued in pursuance of a law of the State of Illinois, as has been already said, this recital clearly refers to the act of March 7th, 1867, and necessarily implies that all the conditions required by such act, in order to make it a valid appropriation by the town, has been complied with, such as that the proposition to make such appropriation or donation had been submitted to a vote of the legal voters of the town at an annual or special town meeting duly called, and that a majority of the votes had been cast in favor of such donation or appropriation, and the auditors' certificate given on each bond implies that all conditions precedent, on which such bonds were voted, had been complied with, because the evidence in this case shows that the proof required by the act of April 16th, 1869, as to the performance of the

conditions precedent had been furnished to the auditor, and was on file in his office, with this ample power to issue these bonds and the recitals that appear upon their face, and the necessary implications from the auditor's certificate, and the admission in the record that the plaintiff is the owner and holder of these bonds, I am of opinion that neither of the defenses urged in this case can avail the defendant.

These bonds are the commercial paper of this defendant town; and while there is no express proof in the record that the plaintiff is a *bona fide* holder for value, yet the ordinary presumption of the law in regard to all commercial paper in the hands of the holder is that it was negotiated before maturity and for value.

This paper is made payable to bearer for the purpose of making it negotiable by delivery.

I do not, therefore, think it was necessary for the plaintiff to prove affirmatively what the law presumes, and, in the absence of proof to the contrary, must hold the plaintiff a *bona fide* holder for value.

The issues are found for the plaintiff.

And the Court then entered a judgment for the plaintiff for $11,769 and costs.

ASSIGNMENT OF ERRORS.

1st. Bonds being issued on June 1, 1871, by virtue of election of March 7, 1870, which was on conditions which had not been complied with, and bonds contained no recitals; the holders were bound to show the conditions had been complied with, and could not be held bona fide and innocent holders without such proof, and no such proof was made; therefore Court erred in not following decisions of

State courts, and holding bonds void as being issued without authority of law.

2nd. Court erred in allowing interest on coupons, as there was no agreement on their face to pay interest, and it is not allowed by laws of Illinois.

Brief.

1st. In Illinois, municipal corporations without special authority from the Legislature, cannot contract debts to exceed taxes levied or money in treasury, and cannot issue interest bearing obligations.

Madison County v. Bartlett, 1 *Scam*, 71.
Pike Co. v. Hosford. 11 *Ill.*, 175.
Hall v. Jackson Co., 95 *Ill.*, 359.
Hardin Co. v. McFarlan, 82 *Ill.*, 141.
Newell v. School Directors, 68 *Ill.*, 514.
Clark v. School Directors, 78 *Ill.*, 476.
Wells v. Whittaker, 4 *Bradwell*, 386.

2nd. These bonds being issued to aid a railroad company, the acts under which it is claimed they were authorized, must be strictly construed and followed, and they must be authorized by clear language, and not by mere implication.

East Oakland v. Skinner, 94 *U. S.*, 257.
Hoffman v. Jasper Co., 110 *U. S.*, 53.
Anthony v. Jasper Co., 110 *Id.* 697, 699.
Scipio v. Wright, 101 *Id.*, 674.
Bissell v. Spring Valley, 110 *Id.* 169, 173.
Ottawa v. Carey, 108 *Id.*, 123.
Lewis v. Shreveport, *Id.*, 286.
Gaddis v. Richland Co., 92 *Ill.*, 123.

3rd. Neither the charter nor any of the acts cited authorized the Chicago, Danville and Vincennes Railroad to be built through the village of Sheldon, as contemplated by the vote of the people, and it never was so built. Therefore no bonds could issue. See acts of 1865, 1867 and 1869.

4th. If one mode of paying the donation is spoken of in the act that, by necessary implication, excludes all others, as the Legislature is the sole jndge of mode to be allowed.

Wells v. Supervisors, 102 *U. S.* 631, 632.
Ogden v. Daviess Co., Id., 639.
Harter v. Kernochan, 103 *Id.*, 572.
Wilson County v. Natl. Bank, Id. 778.
Pana v. Bowler, 107 *U. S.*, 537.
Middleport v. Aetna Life Ins. Co., 82 *Ill.*, 565.
Gaddis v. Richland Co, 92 *Ill.*, 123.
Lippencott v. Pana, *Id.*, 27.

5th. New constitution of Illinois took effect July 2nd, 1870, and prohibited all aids to railroad companies that had not been previously voted under existing laws And if bonds were issued thereafter holder must show by pleading and proof they were authorized by a vote of the people under existing laws, to bring himself within exception, as exception is in the enacting clause, and is for his benefit.

Chit. Pl. Vol. 1, **page* 223.

and authorities cited,

Sedgwick on Construction of Statutes, 93.
Wayman v. Southard, 10 *Wheaton*, 30.
Vorhees v. Bank, U. S., 10 *Pet.*, 471.
Bloodgood v. M. & H. R. R Co., 18 *Wend.*, 20 *to* 24.
Jackson Co. v. Brush, 77 *Ill.*, 66.
Middleport Case, 82 *Id.*, 568.
People ex rel. v. Jackson Co., 92 *Ill.*, 451.
Prairie et al. v. Loyd et al., 97 *Id.*, 191.
Aspinwall v. Commissioners of Daviss Co. 22 *How.* 276.
Concord v. Portsmouth Sav. Buk. 92 *U. S.* 629.

6th. These bonds being issued under and by vitrue of

a vote of the people March 7th, 1870, on certain conditions which act allowed, but which were never performed, and the bonds not containing any recitals the holders were bound to know conditions, and prove they were complied with before bonds issued, and not having done so they are void.

Block a. Comrs., 99 *U. S.*, 696.
People v. Dutcher, 56 *Ill.*, 144.
Alley v. Adams Co., 76 *Ill.*, 101.
People v. Holden, 91 *Ill.*, 450.

7th. As bonds contain no recitals, and being voted on condition, the holders were bound to look to records to see under what conditions voted, as that was the only place such information could be had.

Section 24, *act* 1869, *Cothran's Statute*, *Chap* 139, *section* 67 and 70.

Buchanan v. Lichfield, 102 *U. S.*, 289.
Dixon Co. v. Field, 111 *Id.*, 93.
Northern Bank v. Porter Township, 110 *Id.*, 108.

8th. Holders of bonds must notice all the acts that are referred to in bonds, and also *when* election was held, and what the law was when issued, and all the facts that the law or facts stated, would put them on inquiry of, and if then there was no authority to issue they are void.

Brooklyn v. Ins. Co., 99 *U. S.*, 368.
McClure v. Oxford, 94 *Id.*, 433.
Bates Co. v. Winters, 91 *Id.*, 97.
Ogden v. Co. of Daviess, 102 *Id.*, 640.
And Ill. authorities cited under 5th point.

9th. The act of March 7th, 1867, did not authorize the issue of bonds, but only a payment by immediate taxation.

Middleport Case, 82 *Ill.*, 565.
Wells v. Supervisors, 102 *U. S.*, 626 to 634.

10th. The act of February 26th, 1869, did not authorize issue of bonds, as that was not expressed in the title, as required by constitution. And act of March 24th, 1869, referred to and authorized bonds issued only on elections thereafter to be held.

Lockport v. Gaylord, 61 *Ill.*, 279.
Middleport Case, 82 *Ill.*, 565-6.

11th. In Illinois in a case like this or under similar acts, Supervisor and Clerk are not the corporate authorities of the town, but rest with the people legally convened at the polls.

Marshall et al. v. Sillman et al, 61 *Ill.*, 226.
Middleport Case, 82 *Ill.*, 567.
Town of Roberts case, 88 *Id.*, 20.
Elmwood v. Marcy, 92 *U. S.*, 292.

12th. The common law of England and all statutes in aid thereof prior to 4th year of James the First, shall be in full force and effect till repealed by the Legislature.

Statute of 1845, *Chapter* 62, *sec.* 1.

13th. Where no agreement is made regarding interest, the rate the obligation bears after due, if any, is one of local law, and to be governed thereby.

Holden v. Trust Co., 100 *U. S.*, 72.
Ohio v. Frank, 103 *Id.*, 698.

14th. In Illinois, county orders are due as soon as countersigned and registered by the treasurer, without presentation or demand of payment.

People ex rel. v. Johnson, 100 *Id.*, 545.

15th. At common law no contract drew interest, and in no case was it allowed without express agreement, it

being entirely a creature of the statutes, and in Illinois no municipality is liable for interest on any of its debts or obligations, no difference how long due, without an *express* agreement to pay interest, as the statute does not apply to municipalities.

Madison Co. v. Bartlett, 1 *Scam*, 67.

and authorities cited :

Pike Co. v. Hosford. 11 *Ill.*, 175.
Pekin v. Reynolds, 31 *Ill.*, 531.
Chicago v. People, 59 *Ill.*, 331.
I. C. R. R. Co. v. Cobb, Blaisdell & Co., 72 *Ill.*, 152.
South Park Comrs. v. Dunlevey, 91 *Ill.*, 54-56.
Chicago v. Allcock, 86 *Ill.* 385.

16th. It is not lawful for counties to agree to pay interest on orders issued for current expenses of the county. And townships have no legal right to agree to pay interest on accounts due, or for an extension of time.

Hall v. Jackson Co., 95 *Ill.*, 359.
Hardin Co. v. McFarlan, 82 *Ill.*, 141.
Wells v. Whittaker, 4 *Brad.* 386.

ARGUMENT.

Our first assignment of error is as follows :

Bonds being issued June 1st, 1871, on election of March 7th, 1870, which was on conditions, which conditions had not been complied with, and as there are no recitals except a reference to law of March 7th, 1867, by its title, as one under which they were issued ; the holders were compelled to show by proof, conditions had been complied with, and not having done so are not *bona fide* holders. Therefore Court erred in not following decisions of State Court, and holding bonds void.

In support of this assignment we contend.

1st. The Courts of Illinois have always held that municipal corporations could not contract debts without having the money in the treasury to pay same, or at least a levy made for the current year and expenses. It being recently held they might anticipate a levy of taxes.

Springfield v. Edwards, 84 *Ill.*, 631.

The authority said town had by statute at time of the issue of bonds, to levy taxes and by whom done, was the following:

See Gross Statute of 1869, Chap. 103, p. 752, entitled, Township Organization, Art. 9, § 7, of which is as follows:

The supervisor shall receive all accounts which may be presented to him against the town, and shall lay them before the board of town auditors at or before their annual meeting.

Also the following sections of Art. 10, same statute, p. 753:

§ 1. Officers Composing the Board. In each town the supervisor, town clerk and justices of the peace of the town shall constitute a board of auditors to examine the accounts of the overseers of the poor and the commissioners of highways for such town, for money received and disbursed by them.

§ 2. Any Officers Being Absent.] In case of the absence of any or either of said officers or their failure to attend any meeting of the board, those attending may associate with them the collector or assessor of the town, or both, in place of any absentee or absentees, as the case may be, who shall act, for the time being, as members of such board.

§ 3. Meeting of the Board.] The board of auditors of town accounts shall meet at the town clerk's office for the purpose of examining and auditing the town accounts, semi-annually, in their respective towns, on the Tuesdey next preceding the annual [town] meeting of the board of Supervisors, and on the Tuesday next preceding the annual meeting, and such other times as the interests of the town may require.

§ 4. Accounts Filed by the Clerk.] The accounts so audited, and those rejected, if any, shall be delivered, with the certificate of the auditors, or a majority of them, to the town clerk, to be by him kept on file for the inspection of any of the inhabitants of the town. They shall also be produced by the town clerk at the next annual meeting, and shall be there read by him.

§ 5. Charges Against Towns—Compensation of Town Officers.] The board of auditors, composed of the same officers then in office, shall at the same time and place as stated in § 2, [3] examine and audit all charges and claims against their respective towns, and the compensation of all town officers, except supervisors, for county services.

§ 6. Affidavits to Accounts.] The board of auditors may require accounts presented to be verified by affidavit, setting forth that the same is correct and just and unpaid, or if any part thereof has been paid, setting forth how much.

§ 7. Certificate to be Made] The said board shall make a certificate, to be signed by a majority of said board, specifying the nature of the claim or demand, and to whom the amount is allowed, and shall cause said certificate to be delivered to the town clerk of said town, to be by him kept on file, for the inspection of any of the inhabitants of said town; and the aggregate amount shall be delivered to the supervisor, to be by him laid before the board of supervisors, at their annual meeting. The board of supervisors shall cause the amount of said charges to be levied upon the property of said town, and collected as other taxes are levied and collected. The claims and compensation audited and allowed shall be read to the electors, at the next annual [town] meeting, as directed in § 4 of this article.

§ 8. WHAT ARE TOWN CHARGES.] The following shall be deemed town charges: 1. The compensation of town officers for services rendered their respective towns. 2. Contingent expenses, necessarily incurred, for the use and benefit of the town. 3. The money authorized to be raised by the vote of a town meeting, for any town purposes; and 4. Every sum directed by law to be raised for any town purposes.

§ 9. RAISING MONEY FOR TOWN CHARGES.] The moneys necessary to defray the town charges of each town shall be levied on the taxable property in such town, in the manner prescribed in the act for raising revenue and other moneys for state and county purposes and expenses.

At the time these bonds were issued, the law stood as above, and there was no authority in the general laws of the State authorizing towns to go in debt or issue interest bearing obligations. And the Courts of the State had frequently before that time decided it could not be done without special authority from the Legislature; as they are corporations with limited powers, and can only levy taxes to a limited amount.

Madison County v. Bartlett, 1 *Scam*, 67.
Pike Co. v. Hosford, 11 *Ill*, 175.
Hall v. Jackson Co, 95 *Ill*., 359.
Hardin Co. v. McFarlan, 82 *Ill*., 141.
Newell v. School Directors, 68 *Ill*., 514.
Clark v. School Directors, 78 *Ill*., 476.
Wells v. Whittaker, 4 *Brad*. 386.

This has at all times, even to the present, been the ruling in Illinois, and from the foregoing statutes and decisions all parties were bound to know that the general law did not authorize anything to be contracted for on credit by any town without a special act of the Legislature.

2nd. The holders of the bonds were bound to know

what the *laws* and *constitution* at time of their issue *were*, and take particular notice of the act recited in bonds, and that at the time of their issue they were authorized by law and in accordance with a *vote* of the people.

The bonds on their face show they were issued June 1st, 1871, under and by virtue of the act of 1867. (See bond, page 9, record.)

The only mode of donating by the law of 1867, was by a vote of the people at a general or special election to be *paid* to railroad company as soon as its track was built *through* said township. By section 2, the authorities of the town were required to levy and collect a tax and make such provisions as should be necessary for the *prompt* payment of the appropriation under the provisions of this law.

There is not a word in said act that in any way refers to the issue of bonds in aid of any donation to said company.

The electors on March 7th, 1870, voted $25,000 to the Chicago, Danville and Vincennes Railroad Company, on "condition that it build its road, and run its cars thereon from Chicago into the plat of the village of Sheldon, and across the Toledo, Peoria and Warsaw Railway Company, within the limits of its present depot grounds in Sheldon, and to be in lieu of all other aids to said railroad company." The donation was on June 20th, 1870, accepted by said C., D. & V. R. R. Co., on the terms and conditions voted. (See pages 19 and 20, record.

This was all the election held in said town in any way authorizing a donation to said railroad company, except the one of November 23rd, 1869, of $18,000, on a similar con-

dition, (record 18), but the one of March 7th, 1870, was in lieu of this.

By the act of 1867, referred to in the bonds no donation could be made to any railroad company till said road was built *through* such township, and then the *authorities of said town* were to levy and collect a *tax* to promptly meet the appropriation so voted, and by it no town could donate unless it lay within 20 miles of the east line of the State, and between Chicago and the southern boundry of Lawrence county. (See sections 1 and 2, pages 23 and 24, record.)

By this act the railroad company had a strip of country 20 miles wide along the east line of the State from Chicago to the southern boundary of Lawrence county, in which to locate its road, and thus get up a strife between all the towns and cities in that strip to see which would make the largest donation, and thereby obtain the location of said railroad *through* the town, but before any of them had to pay it must be built *through* the town. By that act it was not sufficient that it be built *along* the line of said town. And the *authorities of said town* were the only parties required to act in paying such a donation, and providing therefor by levy of a tax, and where one mode of paying such a donation is provided, this by necessary implication excludes all others.

Wells v. Supervisors, 102 *U. S.*, 632.
Ogden v. Co. of Daviess, *Id.*, 639.
Pana v. Bowler, 107 *Id.*, 537.
Middleport v. Aetna Life Ins. Co., 82 *Ill.*, 565.
Gaddis v. Richland Co., 92 *Id.*, 123.
Lippencott v. Pana, *Id.* 27.

By that act the supervisor and clerk did not *constitute* the proper *authorities* for the levy of a tax to promptly meet the donation that should be made by the electors, nor did they constitute the proper *authorities* to call the election and *determine* whether such election had been properly carried, and make the record thereof.

Section 1 of the act provides that no donation shall be made till the proposition "has been submitted to a vote of the legal voters at an annual or special meeting for that purpose, on giving 10 days' notice thereof, and the vote taken thereon shall be by ballot at usual place of holding election."

No manner of holding the election is stated, except as above, but the law will then presume the usual mode, as by the general law of the State regarding townships.

The law in townships at that time, in reference to annual or special elections, was as follows:

Article 4, *sections* 1, 9 *and* 10, *Gross statute* 1869, *Chap.* 103, *p.* 744.

§ 1. TOWN MEETINGS—NOTICE REQUIRED.] The citizens of the several towns of this State, qualified by the constitution to vote at general elections, shall annually assemble and hold town meetings in their respective towns, on the first Tuesday of April, at such place in each town as the electors thereof, at their annual town meetings, shall from time to time appoint; and notice of the time and place of holding such meetings shall be given by the town clerk, by posting up written or printed notices in three of the most public places in said town, at least 10 days prior to said meeting; and if there shall be a newspaper published in said town, such notice shall be inserted at least once therein, prior to said meeting.

§ 9. SPECIAL TOWN MEETINGS.] Special town meetings shall be held when the supervisor, town clerk and justice of the peace, or any two of them, together with at least 12

freeholders of the town, shall, in writing, file in the office of the town clerk a statement that a special meeting is necessary to the interest of the town, setting forth the object of the meeting; and the town clerk, or in case of his absence, the supervisor, shall post up notices in five of the most public places in the town, giving at least 10 days' notice of such special town meeting, setting forth the object of the meeting, as contained in the statement filed in his office. Such notice shall likewise be inserted at least once in a newspaper published in the town, if any is published therein. The place of holding special town meeting shall be at the place where the last annual town meeting was held; but in case such place shall be found inconvenient, the meeting may adjourn to the nearest convenient place.

§ 10. Power of Special Town Meeting.] The electors, at special town meetings, when properly convened, shall have power:

1. To fill vacancies in the office of justices of the peace, and to fill vacancies in the office of constable, or any town officer, where the same shall not have been already filled by appointment.

2. To provide for raising money for repairing highways, or building or repairing bridges, in cases of emergency, and to direct the building or repairing thereof.

3. To act upon any subject within the power of the electors at the annual town meeting, which was postponed at the preceding annual town meeting, to be considered at a future special town meeting, for want of time. But special town meetings shall have no power to act on any subject not embraced in the statement and notice calling the same.

By section 1 it is seen the annual election is held on first Tuesday in April, and as neither of the elections of 1869 or 1870 were held on that day, they were special elec-

tions or meetings, and the law applying to manner of holding elections and by whom are as follows :

Id. page 746, *Article* 5, *sections* 1, 2, 3, 4, 5, 9, 10, 13, 14, 17, 18, 20 *and* 22.

§ 1. MODERATOR TO BE CHOSEN.] The electors present at any time between the hours of 9 and 10 o'clock, in the forenoon of the day on which there is an annual or special town meeting, shall be called to order by the town clerk, if there be one. In case there be none, or he is not present, then the voters may elect, by acclamation, one of their number chairman. They shall then proceed to choose one of their number to preside as moderator of such town meeting.

§ 2. HIS OATH.] Before the moderator or the presiding officer of any town meeting shall enter upon the duties of his office, he shall take an oath faithfully and impartially to discharge the duties of such office ; which oath may be administered by the town clerk or other proper officer.

§ 3. THE CLERK.] The town clerk, last before elected or appointed, shall be the clerk of the town meeting, and shall keep faithful minutes of its proceedings ; in which he shall enter, at length, every order or direction and all rules and regulations made by such meeting.

§ 4.] If the town clerk be absent, then such person as shall be chosen for that purpose by the electors present, shall act as clerk of the meeting.

§ 5. DUTY OF THE MODERATOR.] The moderator chosen by the electors to preside at the annual or special town meeting shall regulate the business and procedings thereof, and shall decide all questions of orders, and shall make public declaration of all votes passed. When any vote, so declared by him, shall, upon such declaration being questioned by one or more of the electors present, he shall make the vote certain by causing the voters to rise and be counted or by dividing off.

§ 9 WHO ARE VOTERS.] No person shall be a voter at

any town meeting, unless he shall be qualified to vote at general elections, and has been for the last 30 days an actual resident of the town wherein he shall offer to vote.

§ 10. Of Challenges.] If any person offering to vote at any election, or upon any question arising at such town meeting, shall be challenged as an unqualified voter, the presiding officer shall proceed thereupon in like manner as the judges at the general elections are required, adapting the oath to the circumstances of the town meeting.

§ 13. Opening and Closing Town Meetings.] Town meetings shall be kept open from the time of opening in the morning until 6 o'clock in the afternoon, unless the voters present may, by vote, adjourn one hour, from 12 till 1 o'clock; and at all town meetings and elections of town officers the polls may be closed at 4 o'clock in the afternoon, but may be kept open until a later hour, in the discretion of the electors.

§ 14. Minutes of Proceedings.] The minutes of the proceedings of every town meeting, subscribed by the clerk of said meeting, and by the presiding officer, shall be filed in the office of the town clerk, within two days after such town meeting.

§ 17. Poll List.] When the election is by ballot, a poll list shall be kept by the clerk of the meeting, on which shall be entered the name of each person whose vote shall be received.

§ 18. Ballot Box.] When the election is by ballot, the presiding officer shall deposit the ballots in a box provided for that purpose.

§ 20. Canvass of the Votes.] At the close of every election by ballot, the presiding officer shall proceed publicly to canvass the votes, which canvass, when commenced, shall be continued without adjournment or interruption until the same be completed.

§ 22. Result of the Canvass.] The canvass being completed, a statement of the result shall be entered at

length, by the clerk or the meeting, in the minutes of its proceedings, to be kept by him, as before required, which shall be publicly read by him to the meeting: and such reading shall be deemed notice of the result of the election to every person whose name shall be entered on the poll list as a voter.

The election of March 7th, 1870, was a special town meeting, called by the clerk, under sec. 9, art. 4, aforesaid, as is clearly shown by copy of notice of same on page 19 record, and the donation there voted was in lieu of all former donations, and shows the call was for a donation on *conditions* as heretofore shown, and says such was the *statement* filed in his office.

By the 3d clause of section 10 of article 4, it is provided that "special town meetings shall have no *power* to act on any subject not embraced in the *statement* and *notice* calling the same."

By section 2, article 5, all town elections shall be presided over by a moderator who shall be chosen by the electors at the time of holding the election. And by section 3, the town clerk shall act as clerk, if present, and if not, a clerk shall be chosen by electors, who shall keep faithful minutes of all proceedings at the meeeting.

By section 10 the moderator is to be the judge of the qualification of voters, as regards admitting them.

By section 14, the minutes of the proceedings signed by the *moderator* and a clerk shall be filed in town clerk's office within two days after meeting.

By section 17, a poll list must be kept of the name of each person voting when it is by ballot.

By section 18, the *moderator* shall deposit each ballot, and section 20, at close of election shall canvass all the ballots to ascertain the result.

By section 22, when canvass completed the clerk shall enter at length the result in his minutes, to be kept as before required, and publicly read same to meeting, and *this* shall be deemed notice of the *result*.

Thus the law stood at time of both of said elections, and at the 1869 election, A. G. Willard was the *moderator* or judge, as he calls himself, and Daniel W. Ayres the clerk. (See page 19 record.)

And at the election of 1870, Clarence B. Willard was *moderator*, and D. W. Ayres clerk. (See page 20 record.)

Therefore we say as the law of 1867 refers to no mode of holding the election, and as the general law at that time was as above set out, all of which the holders thereof were bound to notice, the supervisor and clerk could not in any way be considered the corporate *authorities* of said town, and was not authorized by act of 1867 or general law to certify as to said election, or levy taxes for said aid, or issue any bonds under said law, as the aid was to be paid by taxation. The law being that when the act provides no mode of holding the election spoken of, then the election must be held in the manner required by the general law appliable to the corporation referred to.

People v. Datcher, 56 *Ill.*, 147.

People v. Town of Laenna, 67 *Ill.*, 67.

If they had by recitals in said bonds said "this election was held in the manner required by law, and the conditions pre-

scribed by the voters at said election have been complied with, and the town is indebted to railroad company," it would not have bound the town, for by said act of 1867 the supervisor had nothing to do in holding, or in any manner conducting said election, or certifying thereto, but all these duties belonged to the moderator and clerk as heretofore shown, and the town clerk was not necessarily clerk of election, and so far as these things were concerned the supervisor was a third person, and could in no way bind the town. The holder was bound to know *how* these elections were held, and also *what* the law was concerning them, as there are *no recitals* in said bonds, and the law being as heretofore shown in section 10 of article 4, he was bound to know that the electors could not go outside of the *statement*, and *notice*, as this is clearly stated in the public statute, and all of said proceedings were to be *filed* in the town clerk's office, who alone was the custodian thereof, and as that was the only *place* he could go to ascertain what said *statement* and *notice* contained, and the result of said elections, as filed in the town clerk's office, signed by the moderator and clerk, as the law required, he was bound to know contents of the record. By the act referred to in said bonds the supervisor and clerk have no duty to perform or certify to anything, and therefore the record was the only guide, as clearly decided by this court where there are no recitals.

Dixon Co. v. Field, 111 *U. S.*, 93.
NationalBank v. Porter Township, 110 *Id.*, 617.
Buchanan v. Lichfield, 102 *Ill.*, 289.
Carroll Co., v. Smith, 111 *Id.* 562.

The only mode of paying for donation by act of 1867 is a levy of taxes by the *authorities* of said town.

The query then arises, who are the *authorities* of said town for the purpose of *levying taxes?* This being the only mode of payment by law of 1867.

The act does not in any manner intimate who is meant and this being the case, we must see what general law was in reference to townships at that time, as in this matter the same rule will apply as in elections where no mode specified.

By article 19 *of chapter* 103, *Gross, statute* 1869, heretofore cited in full, and to which reference is made, the supervisor and clerk, and the two justices of the town composed the board of audit, and when said board audits an account it is to be signed by a majority of them, and filed with the town clerk, and they are to make a certificate of the amounts and deliver a certificate of the aggregate amount of all of said claims to the supervisor, to be by him laid before the board of supervisors of the county at their annual meeting, who shall cause the same to be extended against the property in said town, as a town tax, the same as other taxes are levied and collected in said county.

From the above, it will be seen that said claim should be audited by the board of audit acting as a body, and the aggregate amount audited by them certified to the county board, thus clearly showing the board of audit as a body are really the *authorities of the town*, and the only ones for the purpose of causing a tax to be extended, as shown by above statute and following authorities.

Marshall v. Silliman, 61 *Ill.*, 225.
Livingston v. Neider, 53 *Ill.*, 302.
Middleport v. Aetna Life Ins. Co., 82 *Ill.*, 567.
Elmwood . Marcy, 92 *U. S.*, 293.

The above statutes and authorities show the supervisor and clerk were *not* the corporate *authorities* under act of 1867, and had no authority to make any representations to bind said town. As regards *how* said election was held, or the *levy* of any tax, they were, so far as those facts are concerned, third persons as heretofore shown.

At the time these elections were held, the act of Febrdary 26th, 1869, on page 24 of record, was in force, the title to which was as follows :

"An act to legalize certain aids heretofore voted and granted to aid in the construction of the Chicago. Danville and Vincennes Railroad."

At the time that act was passed, the constitution of 1848 contained this provision,

"No private or local law which may be passed by the General Assembly shall embrace more than one subject, and that shall be *expressed* in the title."

The *only* thing the act by its title purports to do is to *legalize* certain aids heretofore voted or granted to said railroad company.

From the title, you would conclude there had been some defects in the elections, or in calling the same, or something to that effect. Would you for an instant think of looking in an act so entitled, with such a provision in the constitution, for authority to issue bonds on an election afterwards held? We think not. Especially when the Supreme Court of the State had, on account of that clause of the constitution, at the September term, 1871, held an act with a similar title unconstitutional.

Village of Lockport v. Gaylord, 61 *Ill.*, 279

When this identical act was before the Court, they following the case in 61 Ill., held all provisions therein, not referring to the legalizing of aids, unconstitutional.

Middleport v. Aetna Life Ins. Co., 82 *Ill.*, 565-6.

In fact, the holding on that question has been uniform, and in the last case bonds that had been issued to the same road under these acts as claimed were discussed, and in the Middleport case all of said acts were fully considered, and held not to authorize the issue of bonds. At the same term of Court with Middleport case it passed on two other cases. In both of said cases Court held acts did not authorize the issue of bonds, and declared them void, affirming the Middleport case, but filed no opinions, as law only authorized filing on new questions. See *Belmont v. Aetna Life Ins. Co.*, and *Milford v. Aetna Life Ins. Co.*, in table of unreported cases at end of *Vol.* 84 *Ill.* reports. These three cases were on donations to same railroad company, under same acts as this is claimed to be, but all of them had recitals and this has none, and they are entitled to much weight in this Court, as to construction of laws by State Court.

The other act in force when election was held was March 24th, 1869, on page 25 of record, entitled, "An act to enable townships or counties along the line of the Chicago, Danville and Vincennes Railroad to contribute towards the construction of said railroad."

The first section of this act refers to counties, and was the only act that embraced counties.

The second section refers to townships *along* the line of said railroad, whether it ran *into* or *through* said township or not, and authorized the legal voters thereof, by a majority of them voting at any election held for that purpose, to

make a donation to aid in constructing said railroad, and the *proper authorities* shall levy and collect a tax, the same as other taxes are collected, to promptly meet such obligation.

This section, it will be seen, goes beyond the act of 1867 or February 26th, 1869, and authorizes a donation by a township *along* the line of said railroad, while the other acts required the road built *into* or *through* the town.

By section three of this act it is provided the vote spoken of in section two by a *township*, which is case at bar "may be taken at a special meeting called, as *now provided by law* for such meetings." This section speaks particularly as to manner of calling elections by a town or city, but not as to townships, and says at the end of section "in *no* case shall the appropriations exceed the amount specified in the *notice or notices.*"

By section 4 of the act the *authorities of the township* are authorized to issue bonds drawing 10 per cent. interest in order to borrow money to meet such contribution, and shall have power to levy and collect taxes to pay principal or interest.

By section five, the amount contributed shall be due as soon as railroad built *into* or *opposite* such township.

By section 7. Whatever any township *along* the line of said railroad has heretofore done towards securing the right of way is ratified.

By section eight all aids theretofore voted are ratified on the conditions voted.

The above is the substance of said act, and although the bonds do not refer to this act, and although they contain no recitals it is claimed that this act is authority under the vote aforesaid to issue bonds, as the vote was after said act, and that said holders are innocent holders.

As the holder was bound to know the law can he claim under this act, although not referred to? We do not deny this, but assert as the law that if this act authorized the issue he could claim under it, even though bonds are silent in that respect if he had proven bonds had been authorized by a vote of the people.

But when he claims under this act he must notice *all* of its provisions, and will be bound by *each* and *every* part thereof. Said act must *all* be considered to arrive at the intention of the Legislature, as none of it can be allowed to pass without a meaning, if possible so to do, this being one of the rules of construction.

The third section of the act refers to the election, and as both of the elections held were special elections this section specially provides that "it may be called as now provided by law for such meetings," and as no other mode is any place specified in said act, the word "may" is to be construed "shall," and as the town law provides for the calling of special elections by a written statement, signed by twelve freeholders and two town officers, petitioning the clerk to call a special town meeting, this is the mode meant. (See section 9, article 4, heretofore quoted.)

People v. Dutcher, 56 *Ill.*, 147.

People ex rel v. Town of Laenna, 67 *Ill.*, 67.

The clerk then calls the election according to that *state-*

ment, which he did in this case, and fully set out the conditions in said notice. (See page 19 record, with result shown on page 20 record.)

The third clause section 10, article 4, heretofore shown, provides as follows :

"Special town meetings shall have no *power* to act on any subject not embraced in the statement, and notice calling the same."

Now as this very statute of March 24th, 1869, under which they claim, refers to the general law as to the *mode* of calling special town meeting, he was bound not only to know this act of 1869, but all other acts it refers to, or to which his inquiry was directed, and if from all or any of said acts he could ascertain the bonds were issued without authority they are void in hands of whomsoever they may come.

Brooklyn v. Ins. Co., 99 *U S.*, 368.
McClure v. Oxford, 94 *Id*, 433.
Bates Co. v. Winters, 97 *Id*, 91.
Ogden v. Daviess Co, 102 *Id.*, 640.

This being the case, by what mode of reasoning is the holder of these bonds to avoid the notice given to him in the act of 1869, by the reference to the general law, and then when he is referred to it for information, how is he to avoid taking notice of all facts contained therein that he could by dilligent examination thereof ascertain, and as the above clause is one of those in said article referring to special town meetings. And it particularly refers to the *statement* by the freehhlders and officers to the town clerk, and *notice* by him of the election, and states that it is the limit

of their power. Is he not then put on inquiry as to what said *statement* and *notice* contains?

We think the logic from the foregoing statement of the law of notice is irresistable that he is.

When he makes this inquiry from whom must it be made, and where can it be found?

The same article the statute of 1869 referred him to regarding the special meeting tells him it is one of the *files* in the town clerk's office, and thus he is referred to the record alone, and when he goes there he finds the notice on page 19 of record, with all the conditions therein set forth, and it says it is the *same* as the statement, and he thus knows no bonds could be issued till all of said conditions were complied with, and if issued without being complied with they are void.

As these bonds say nothing about any election of any kind he must show there was an election held, as all the acts require an election to be held, and as heretofore shown the act of 1867 does not authorize bonds, but payment in an entirely different mode. And as the act of 1869 of March 24th, should be construed as above, we contend he must also take notice of the result of said votes as found on the records of the town, and signed by the moderator and clerk, as heretofore shown, and found on page 18 of record for election of 1869, and page 20 for election of 1870, as by the general law *they* are the *only* parties authorized to declare *result* of the election. (See sections 14, 20 and 22, article 5, heretofore cited in full.

For the election of 1869 there is no *statement* or *notice*

showing the conditions fully, but the *result* of the election shows it was for the purpose of "aiding in the construction of the C., D. & V. R. R. *through* the town of Sheldon, making the village of Sheldon a *point* on the route of said road."

This is sufficient notice to him that no bonds were authorized unless the "road ran *through* the town and made the village of Sheldon a *point* on the road." As this was never done he must have known bonds were void.

Section 3 of this act refers the holder of the bonds to the notices of the election for the purpose of ascertaining the amount appropriated, and if he be required to look to the notices for one purpose, will he not be compelled to notice everything they contain? Can there be any doubt of this proposition? Will it be contended that bonds issued under this act, with such a clause therein, if the amount was in excess of that specified in the notice, the excess would not be void, there being no recitals that in any way bind the town in said bonds? We think not. If such be the case is it not on account of the clause in said section referring holder to the notice, and thus putting him on inquiry? Therefore he must know contents of notice for all purposes, and this shows bonds void under facts proven.

We also contend by section 4 of said act the *authorities of said township* does not mean the supervisor and clerk. This is the section that refers to the issue of bonds, and the same section says said *authorities* shall have power to levy and collect taxes, but no where says *who* they are. As all towns require taxes to be levied for the general expenses of town these parties can be ascertained by the general laws

of township organization, as no town can issue interest bearing obligations without a special law as heretofore shown, but all towns can levy a tax, and as levy of taxes and issuing of bonds are by same parties, according to section 4 of this act, the ascertaining of *one* shows who is to perform the *other* duty.

The levying of taxes we have shown in discussing the act of 1867 under the general law, was to be done by the board of audit, as a body, by certifying to the board of supervisors, and this being the case *they* are the ones to authorize the issue of bonds under this act. (See article 10 heretofore quoted.) This being clearly decided in the *Middleport Case*, 82 *Ill.*, 565. As they never did so authorize or issue, the bonds are void, as the supervisor and clerk are not such authorities as heretofore shown.

We also contend, that under the evidence in this case, there was no authority to issue bonds to said R. R. Co., by virtue of Act of March 24th, 1879, because the town of Sheldon did not lie *along* the line of said railroad, as contemplated by said act.

The words of that act must be construed in connection with the other acts of said company heretofore cited, and thus ascertain what the legislature meant by the word *along* By all the former acts said railroad must be built *through* a township before it had any authority to donate to said company. All of the acts before this one excluded counties, but the first section of this includes counties, but as regards counties, the road must be built *through* them, thus putting counties on the same plane as townships under former acts. In running the road through the different coun-

ties along the line of said railroad, it was found that it, in some instances, passed along the line of townships without going into or through them, and they were as greatly benefited thereby as they would be had it ran into or through them, except as to the taxes for which railroad was liable; and some townships in such cases had really voted aid to said railroad company, and that was the reason of incorporating the seventh section in said act, and thus attempting to validate such aids.

But would it be very beneficial for a township to have a railroad built from five to nine miles from its border? Certainly not. In fact it would be a detriment to it, as thereby it would build up competing towns without its border and detract from business of towns within. And in this case, Sheldon being located on a railroad that had been in operation since 1860, the building of a cross road nine miles west of it would be of great injury, which in fact it was, and such things were no doubt seen by the legislature when they used the word *along*.

The statute must be construed according to its language, and the words used must have the signification they do in common parlance. Now what do you mean when you speak of a farm lying along the highway? Do you mean adjoining said highway? Is this not what all people mean by such language? If another farm lay between it and the highway, would you say it lay along the highway? We think not. In fact that is not the accepted meaning. I saw two head of cattle lying dead along the line of the railroad. What does this mean if not they lay adjacent to and adjoining the railroad? The ships lay along side each other. Does this not mean they lay touching each other? When

you speak of a farm laying along the railroad do you not mean it touches the Right of Way? If another farm lay between it and Right of Way would you so speak? This seems to be the common acceptance of the term, and that is the meaning we must attribute to the legislature, unless it clearly appears from all the language used, some other meaning was intended. Especially is this the case when all such acts must have a strict construction in this kind of a case.

In connection with this take the testimony of Henry Stearns and Robert Caldwell, on page 22 of record, where they state the road was built through the county of Iroquois in the years 1869, 1870 and 1871, and the nearest place it approached the town was 5 miles and the village of Sheldon was 9 miles. The point it ran through in Iroquois county was Watseka, 9 miles due west of Sheldon, on the Toledo, Peoria and Warsaw Railroad, and the very point spoken of in the act of 1867, which declares Watseka shall in certain events be a point on that road, and before this vote road was located through Watseka, and if road was built from Watseka to Danville, another point on road, according to charter it could not go through Sheldon. Therefore we say from all the acts, and especially that of 1867, Sheldon could not be a point on the road. Even the act of March 24th, 1869, did not authorize any donation to said company by the town of Sheldon, as the township did not lay *along* the line of said railroad.

These bonds being voted on conditions that were never performed, and there being no recitals therein, holders as heretofore shown must take notice of all the laws then in force, including the general township organization law, and

all its provisions in connection with the special acts. They were also bound to know that the people of the township could vote aid under said acts on condition, although it was not specially spoken of in any of them, but they all, by language therein, clearly show they could so do, because each of them speak of conditional donations, and besides this the Supreme Court of the State had, long before these bonds were issued, decided such was the privilege of the voters, whether the act so provided or not.

People ex rel. v. Board of Sup. Tazewell Co., 22 *Ill.*, 156.

Decided at April term, 1859.

People v. Dutcher, 56 *Ill.*, 147.

Decided at September Term, 1870.

Alley v. Adams Co., 76 *Ill.*, 101.

People v. Holden, 91 *Ill.*, 450.

At the time these bonds were issued the constitution of 1870 was in force, and contained the following provision :

"No township or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to, or loan its credit in aid of such corporation. *Provided* however that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions, where the same have been authorized under existing laws by a vote of the people of such municipalities prior to such adoption."

By the fore part of that provision the donations to roads by townships were absolutely prohibited, and had it not been for the exception therein, there would have been no question about the matter. The query then arises, what is the construction to be placed thereon, and on whom is the burden of proof to show the facts, spoken of in the proviso have taken place to make the township liable ?

As these bonds do not in any way refer to any election being held, and the constitution absolutely prohibited such donations unless authorized by a vote of the people prior to its adoption under existing laws, it devolved on the holders to show themselves within the exception, and show by pleading and proof the donation had been authorized by a vote of the people.

The rule in such cases, according to the common law authorities, being as follows:

"When an exception is incorporated in the body of a clause, he who pleads the clause ought also to plead the exception; but where there is a clause for the benefit of the pleader, and afterwards follows a proviso which is against him, he shall plead the clause and leave it to his adversary to show the proviso."

Joes v. Axer, 1 *Ld Raym.*, 120.

Cathcart v. Hurdy, 2 *Maw. and Sel.*, 540.

"If the exception, or proviso, forms no part of the plaintiff's title or right of action, but merely a matter of excuse for the defendant, it need not be pleaded but left to the opposite party."

Hart v. Ceis, 8 *Johns*, 48.

"If the proviso is necessary to give the party pleading the clause the right he claims under it, he *must* plead it. But if it forms no part of such right, but merely an excuse for defendant, he need not plead it but leave that to defendant."

Bloodgood v. M. & H. R. R. Co, 18 *Wend*, 20.

To the same effect are all the common law authorities on the construction of statutes, and as the constitution absolutely prohibited such donations made thereafter unless brought within the exceptions therein, the Supreme Court of the State, following the above and all other well con-

sidered cases, decided that the burden was on the parties claiming by virtue of the bonds to show by *pleading* and *proof* bonds were authorized by a vote of the people prior to its adoption under existing laws.

Jackson Co. v. Brush, 77 *Ill.*, 66.
Middleport Case, 82 *Ill.*, 568.
People ex rel. v. Jackson Co, 92 *Ill.*, 451.
Prairie et al. v. Loyd et al., 97 *Id.*, 191.

This Court has frequently decided that such municipalities are bound by recitals in their bonds when made by officers, who are *required* by law to ascertain certain *facts* before issuing bonds, and after having ascertained them *certified* to their existence. This was on the principle that the law pointed to those officers as the ones who were to be the judges of the existence of the facts, and having formed their judgment and certified thereto in the issue of the bonds of the municipality, and the bonds having gone into the markets, and been purchased by parties for a valuable consideration, relying on such recitals the corporation would then be estopped from denying them, as it would be bad faith towards the holders thereof.

This being the rule as regards *recitals* contained in bonds by officers *authorized* to make them, although such recitals may be false, the rule is entirely different when there are *no recitals*, and especially is this the case when, as in this, the constitution absolutely prohibited the issue of bonds after July 2d, 1870, unless authorized by a *vote* of the people under existing laws prior to its adoption.

There is no hardship imposed on the holder in such case to hold him to strict proof of all the acts that entitle him to

an issue of the bonds, and treat the township as you did him in case of recitals, because the authority to issue the bonds is conferred by *public laws*, which all persons are bound to know, and he, in such case, there being no recitals, is bound to know all the conditions were complied with, and if he has not so proven, they are void in the hands of whomsoever they may come.

Block v. Comrs., 99 *U. S*, 696.
Buchanan v. Lichfield, 102 *Ill.*, 289.
National Bank v. Porter Township, 110 *Id.*, 607.
Dixon Co. v. Field, 111 *Id.*, 93.

We have in this case shown, as we believe, that under the acts of 1867 and 1869, the holder of the bonds on account of the peculiar language of said acts *must* notice the general township organization law, and that the vote was limited to the proposition contained in the *statement* and notice, and it was on condition, and conditions not complied with, and that the Supervisor and Clerk had no authority to do any act, or certify to any fact concerning said elections in the issue of said bonds that would in any way bind the township, as they were *not* the *proper* authorities, and that they had no authority to issue bonds.

But not satisfied with that on the trial, in order to overcome all presumption, if any in such existed we proved the vote *was* on conditions and they were not performed.

Can it be claimed under facts proven, these bonds were authorized by a vote the people? What advantage would it be to people of Sheldon to have voted an aid to a road that ran five miles outside of their town, and nine miles from their place of doing business? There was great reason for restricting it to the Village of Sheldon, for then it would no

doubt greatly enhance not only the value of property but increase largely the population of the place, and also make it a competing line for freights and passengers, and thus increase the value of all the lands in the township. Besides this, the road would run *through* the township at least six miles, as it could never get into the Village of Sheldon and touch Danville, a point named in the Charter, without running at least six miles *through* the township. This alone on the question of taxes was an item, say nothing about the other advantages we have spoken of and which were incentives for the vote, and had the road ran *through* the town as contemplated by the vote, there is no doubt but the increased value of the property on account of the railroad and otherwise, would have been enough in ten years or fifteen years at farthest, to have paid all of said donation. But as it is they have been deprived of all the above increase in value, and the other advantages spoken of. Will this Court say that in such a case where no road is built as contracted for, and no recitals in bonds, and the unjust manner the township has been treated, that they must pay these bonds? We think not; especially when law is so strongly the other way.

In this case the Court rendered an opinion which was filed, and is found on pages 10, 11, 12 and 13, of record. In which opinion he does not profess to find any facts, but argues from above acts of 1867, and March 24th, 1869, and April 16th, 1869, and quoting the recitals in said bonds we have heretofore, says :

"They necessarily imply all the conditions required by such act, in order to make it a valid appropriation by the town, have been complied with, such as the proposition to make such appropriation or donation had been submitted

to the legal voters of the town, at a special meeting duly called, and that a majority of the votes cast had been in favor of such donation; and the auditors certificate given on each bond implies that all conditions precedent on which such bonds were voted had been complied with, because the evidence in this case shows that the proof required by the act of April 16th, 1869, as to the performance of the condition precedent had been furnished to the auditor, and was on file in his office. With these ample powers to issue these bonds, and the recitals on their face and the necessary implication from the auditor's certificate, and the admission in the record plaintiff is the holder of the bonds, I must hold town liable."

These bonds are only signed by the *supervisor* and *clerk*. Now under the act of 1867 does the recital imply what the Court says it does as a matter of law? We say it does not, as *they* had no authority to bind the town in any way by recitals in said bonds concerning said election, because it was a special meeting, and those duties belonged to the moderator and clerk who certified it to town clerk, as heretofore shown, even had there been no provision of the constitution, and the act of 1867 never authorized bonds as previously shown, and there are no recitals referring to any other act. But at time of their issue, the new constitution being in force, it devolved on the holder to notice all fo said conditions, and *prove* them as shown by the authorities and which are all the other way from that intimated by the Court. We call your Honors special attention to the fact that from the very acts cited of March 24th, 1869, the supervisor and clerk had no authority to issue bonds when the language used therein is construed according to the cannons of construction as we have shown. But it is made much stronger when that construction is sustained by the Supreme Court of the State when passing on the identical acts on bonds *with* recitals, and it held that it belonged to

board of audit to issue bonds, as they were the financial agents of township. *Middleport Case*, 82 *Ill.*, 565. And no Court has ever held a township bound by acts of a party not authorized to do the act.

The trial court also speaks of certificate of the auditor of State on said bonds and places great stress on that, as showing that all the conditions have been complied with in act of April 16, 1869.

This certificate was made Oct. 20, 1871, and the Court says it implies that all conditions precedent had been complied with, because the affidavit of Caldwell shows that fact. (See certificate and affidavit on pages 17 and 18 of record.)

The act of April 16, 1869, Section 2, provides "That said bonds, in order to receive the benefits of this act, shall be registered by the *holder* thereof at the office of the auditor of public accounts, who shall cause the same to be registered in a book kept for that purpose. Such registration shall show the date, amount, number, maturity and rate of interest of said bond and under what act and by what township issued, and the auditor shall certify upon such bond the *fact* of such registration and receive one dollar therefor."

You will see that none of the above facts are certified on the bond, but simply that it is registered in his office in conformity with said act and there is nothing on it to show the contents of the affidavit of Caldwell, and if the law presumes they knew of its contents, which was made by a person not authorized by the law under which election was held to certifiy those statements, how much more would it presume that they noticed the statement and result of the election from the records of the town direct, and from which the supervisor must have taken it and thus knew the votes were on conditions.

By Section 7 of said act it is provided:

"It shall not be lawful to register any bonds under the provisions of this act until after the railroad, in aid of which the debt was incurred, shall have been completed near to or in such township, and the cars shall have run thereon, nor unless the proposition was first submitted to an election of the voters of said township under the provisions of the laws of this State and a majority of the legal voters *living* in said township were in favor of such donation. And any township shall have the right on making such donation to prescribe the *conditions* on which it shall be made, and such bonds shall *not* be valid unless such conditions *precedent* shall have been complied with, and the Supervisor of the township, immediately on the completion of said railroad near to, into or through said township, as the same may have been agreed upon, and the running of the cars thereon, shall certify under oath that all the preliminary conditions required by this act have been complied with, and then the bonds shall be subjected to registration as hereinbefore provided."

By section 2 of the act it is made the duty of the *holder* to cause the bonds to be registered, and by section 7, before they can be registered he must have the affidavit of the supervisor to certain facts. This being the case who is the supervisor acting for? Is it not for the holder, and in pursuance of his wishes? And this being the case, is he not acting as the agent of such holder?

The town has no interest whatever in having said bonds registered, and the law no place makes it its duty so to do. Nor does the act in any place state what the *effect* of such a registration shall have on said bonds. Nor does it say in any place, or even intimate that town will be bound by the acts or assertions of its supervisor, who in order to further the ends of the bond-holder makes certain statements under oath. This was an *exparte* affidavit, and made in the interest of the bond-holder and at his request, and now he seeks

to bind the town by such *exparte* statements when the proof clearly shows that not one of the conditions of said vote had been complied with.

How much more is such the fact when the constitution passed July 2d, 1870, absolutely prohibited all donations to a railroad by a township, unless in *accordance with a vote* of the people under existing laws prior thereto.

Would it not be a farce to hold that the organic law of the State could be frittered away about a year and a half after it took effect, and four and a half months after said bonds had been issued and delivered by the mere *exparte* acts of the supervisor of a township, and of the Auditor of State, who is not an officer of the town, but was acting for the bond-holder, and from whom he receives one dollar for every certificate placed on said bonds? If these bonds were ever valid they had all the validity that could be imparted to them on June 1st, 1871, when issued and delivered, and could not be made good by any subsequent act of any one, especially when the law is silent as to the effect of such acts, and the township is required to do nothing, and as such has no voice in the matter. More especially is this the case when section 7 of said act provides the township may prescribe *conditions* and provides the bonds shall not be valid until the *conditions* have been *complied* with. This being the case, if the holders claim under *this* act, they must nctice all its provisions and be governed thereby. And as we have heretofore shown from the general law and the acts under which these bonds purport to have been issued, must *know* the contents of the statement, and that it was a vote on condition, and we certainly have shown the conditions have not been performed, although the duty of bringing

themselves within the exception to the constitution devolved on the bond-holders. They should under this act show such facts when there are *no recitals* in the bonds as would bring them within the exceptions in constitution as held by the Supreme Court of Illinois, and not having done so the bonds are void.

Town of Eagle v. Kohn et al., 84 *Ill.*, 295.
Insurance Co. v. Bruce, 105 *U. S.*, 333.

Another serious objection to such a construction of the act of April 16, 1869, is, that act no where professes to provide for the calling of any election for the purpose of voting aid to a railroad company, but was an act passed for an entirely different purpose, to-wit, for the purpose of inducing towns and counties to give aid to the building of railroads, and in order to so incite them, provided all the excess of taxes for all purposes on the valuation over that of 1868, except the state school taxes and the two mill tax provided for in the constitution, should be paid into the State Treasury for the term of ten years, in order to pay said bonds and interest. And in addition to the taxes raised on the valuation over 1868, as aforesaid, all taxes of every name and nature that arose from any railroad, or its equipments in said township, was to be paid into the State Treasury for the same purpose. This was the sole and entire object of said act, and for this reason, and this alone, was the owners of the bonds required to register their bonds, and until registered they could not obtain the benefits of that act. But that act, from one end to the other, refers to other laws under which said aids may be voted; and the holder was bound to know those other acts had been complied with from the conditions of section seven heretofore shown.

The result of that act has been in this state to cause many municipal corporations to vote aid to railroad companies under the belief the excess of taxes, as aforesaid, occasioned by the value of the railroad and appurtenances, and the excess of value over the year 1868 of the other property in town, would pay all of said bonds and interest, and thus be no burden on said corporations. But this part of said law has long ago, by the Supreme Court of the state, been declared unconstitutional, thus rendering visionary all the hopes of the municipalities who had been led into that trap, and their name is legion.

Ramsey v. Hoeger, 76 *Ill.*, 440.

For the whole of said act see *Gross Statute of* 1869, *p.* 554.

We have quoted all of said act above that, in our opinion, applies to this case and the Supreme Court of the State, in 76 Ill., has quoted sections 1, 4, 5, and 9, which with 2 and 7 above, shows all the act that could in any way be necessary to its construction, and from the whole act we say our construction is correct.

This act, not professing to authorize an aid to a railroad company by a municipality, will the Courts hold the *exparte* acts of a supervisor of a town under such an act when acting for the bondholder in order that he may get his bond registered, and long after the bond has been issued and delivered, be binding on the town? Or the exparte acts of the State Auditor at same time without the knowledge or consent of the town in any manner bind it unless it be by some *clear* and *explicit* language of the act? We think not, and as the act contains no such language, we

believe the trial court did not, in this case, put the proper legal construction on acts of Supervisor and Auditor.

II.

The next error assigned is in allowing six per cent. interest on the coupons after their maturity, as they did not bear any interest on their face.

That the Court allowed 10 per cent on face of bonds from due till date of judgment, and 6 per cent. on coupons from due till date of judgment, can be seen from following calculation. See record, page 15, for bonds and coupons:

Judgment rendered February 18th, 1884, for $11,769.
Bonds 13, 17, 18, 19, 20 and 21, of $1,000 each, $6,000.00.
Int. 10 per ct. from June 1, '81, to Feb. 18, '84, 1,628.33.
Two coupons, due June 1st, 1876, - - 200.00
Int. on same, 7 yrs. 8 mos., 17 days @ 6 per cent., - 92.57
Six coupons due June 1st, 1877, - - - 600.00.
Int. on same, 6 yrs., 8 mos., 17 days, @ 6 per ct., 241.70.
Six coupons due June 1st, 1878, - - - 600.00.
Int. on same, 5 yrs., 8 mos., 17 days @ 6 per cent., 205.70.
Six coupons due June 1st, 1879, - - - 600.00.
Int. on same, 4 yrs. 8 mos., 17 days @ 6 per cent., 169.70.
Six coupons due June 1st, 1880, - - - 600.00.
Int. on same, 3 yrs., 8 mos., 17 days @ 6 per cent., 133.70.
Six coupons due June 1st, 1881, - - - 600.00.
Int. on same, 2 yrs., 8 mos., 17 days @ 6 per cent., - 97.70.

Total, - - - - $11,769.40.

This calculation is only 40 cents more than the judgment.

This court citing the case of *Holden v. Trust Co.*, 100 *U. S.*, 72. Said in *Ohio v. Frank*, 103 *Id.*, 698.

"The rule heretofore applied is to give the contract rate up to the maturity of the contract, and thereafter the rate prescribed for cases, where the parties themselves have fixed no rate. But when a different rule has been established it governs, of course, in that locality. The question is always one of local law."

The above, being the ruling of this Court on the question of interest on coupons after due, the only question remaining is, What is the rule held by the Courts of Illinois?

The bonds bear 10 per cent. interest on their face, and according to the ruling of the Illinois Courts they will draw the same interest after due they do before, till paid. But the coupons do not draw interest on their face, and there is no agreement to pay interest thereon, and a different rule prevails regarding municipalities than persons. This being the case, we must look to the decisions of the Illinois Courts, made *prior* to issue of these bonds, and see what it held in similar cases.

At the common law no contract drew interest, and in no case was it allowed, but it was a creature entirely of statute.

Madison County v. Bartlett, 1 *Scam*, 67.

and authorities there cited:

Decided December term, 1832. Also,

Pekin v. Reynolds, 31 *Ill*, 531.

at April term, 1863.

In both of the last cited cases, the Court decided there was no statute in Illinois that applied to *municipal* corporations.

The case in 1 Scam, 67, was a suit on a county order, long past due, and it was held that the county was not liable for interest thereon *after due*.

This case was followed by one on a contract for the building of a bridge, the price of which was due, and the party refused to receive a county order *unless* it on its face was made to draw interest, which was refused, and then suit was brought on the contract, and although it was admitted the contract was due, there being no *express* agreement to pay interest it was held the county was not liable therefor, even *after due*, and affirmed the case in 1 Scam 67, and distinguished it from the case of *LaSalle Co. v. Simmons*, 5 *Glim.*, 513, which was an action of tort and *not* of contract. *Pike Co. v. Hosford*, 11 *Ill.*, 175. Decided December term, 1849.

The city of Pekin had issued bonds to amount of $100,000 to a railroad company, with coupons for interest attached, payable in city of New York, the coupons being almost identical with those at bar, except as to the place of payment, and suit was brought on those coupons, claiming interest thereon after due. The Supreme Court, in passing on the question, say, "If such instruments could in any event draw interest without an *express* agreement, it could only be after a proper demand of payment, as until a demand such a body is not in default. But we may go farther, as we held in *Madison Co. v. Bartlett*, 1 *Scam.*, 67, that the State and county were not liable for interest on their orders or warrants, and placed it on the ground of them being corporations with *limited* powers, and it must be presumed they employed all their means to cancel their debts. That only being authorized to levy taxes to a limited extent, the presumption was they had exhausted their power without producing the means to pay; and as the State and county are *not* named in the statute regulating interest, the inference is they were not *designed* to pay

interest on their indebtedness, and being a creature of statute we must look to it, and if *not* authorized thereby it could *not be recovered*, as interest was not allowed at common law, and the same reasoning applies to a city or town, and our conclusion is that such obligations do not bear interest."

Pekin v. Reynolds, 31 *Ill*., 531

Decided at April term, 1863.

The above cases have been affirmed in

Chicago v. People, 59 *Ill*., 331. *September*, 1870

I. C. R. R. Co. v. Cobb, Blaisdell & Co., 72 *Ill.*, 152

South Park Comrs. v. Dunlevey, 91 *Ill.*, 54.

Chicago v. Allcock, 86 *Ill.* 385.

Wells v. Whittaker, 4 *Brad.* 386.

The Supreme Court of Illinois has not, so far as we know, ever decided otherwise than above in any case of contract against a municipal corporation, and the decisions are in an unbroken line, beginning with the December term, 1839, up to the present time. This being, as your Honors have said, a matter of *local* law, it certainly must, under the above local authorities, be decided in favor of the town.

In case from 91 Ill., 54 to 56, the Court said the South Park Commissioners were held to be a municipal corporation, and as such no interest could be collected from them when there had been no express agreement, and Court would not allow interest even on a judgment, unless the land had been *actually* taken, and to same effect is case in 86 Ill. And in case of *Cook Co. v. South Park Comrs.*, 61 *Ill.*, 124, they say there is no error in not allowing interest on verdict from time of its rendition till judgment, and statute of Ill., chapter 74, section 83, allows interest on verdicts against persons; thus clearly showing as against a

municipal corporation in Illinois no interest can be allowed without *express* agreement.

The only authorities militating against the above are the following:

In *Walnut v. Wade*, 103 *U. S.*; 696, Court says, The coupons bore interest from the day they were payable, and cite *Aurora v. West*, 7 *Wall*, 105, and *Clark v. Iowa City*, 20 *Wall.*, 589, and *Town of Genoa v. Woodruff*, 92 *U. S.*, 502. In the last case it was in accordance with the decision of the State Courts of New York, and thus within the rule laid down by this Court above. In the case from 20 Wall., it is mere *dicta*, and not necessary to decision of the case. In fact, point is not made. In case from 7 Wall., the case is not argued on principle, but a mere assertion is made that, "it is quite apparent on general principles that they should draw interest after payment of the principal, is unjustly neglected or refused," and Court says after debt is due, the interest, as a general rule, is allowed." Such, no doubt, is the fact on bills and notes issued by persons, and the reason is because statute applies, as heretofore shown, but without a statute, interest could not be collected from a person, much less a municipality.

In case from 103 U. S. Court says, "There is nothing in this act authorizing the issue of bonds to which the coupons belonged that takes them *out* of these decisions. And we have been referred to no legislation in the State of Illinois, which *forbids* the allowance of interest on this kind of commercial paper."

There was an express agreement in the bonds, but none in coupons in that case. This reasoning is not sound, as by the diligence or negligence of counsel the law might be changed, or more strictly speaking the decision. *By*

Chap. 62, *section* 1, *Gross statutes of Ill., for* 1869, by act of 1845. "The common law of England, and all statutes in aid thereof, prior to 4th year of James the First, until repealed by Legislature, was to be of full force and effect." Thus law stood when bonds were issued.

Nor is it sound reasoning on question of interest on coupons to say that there is nothing in acts to take them *out* of decisions of this court in States where common law is in force, as by that law interest could *not* be allowed. In such case it requires a *positive* statute before interest in such cases could be collected, as shown very clearly by all the Illinois authorities previously cited, and as heretofore shown there is no such statute for the allowance of interest, and its allowance was erroneous. Especially is this the case when the Courts of Illinois had frequently decided long *before* these bonds or coupons were issued, that it could not be collected without an *express* agreement. And there is no proof it was ever demanded at treasury of town, therefore it could not be said it was unjustly refused.

Some of the authorities cited in Illinois refer to county warrants, which are payable on demand. You might say the were not due till demand made, but the Court has held that such obligations are due as soon as signed, and registered by the treasurer, that is as soon as issued, and no demand or presentment is necessary.

People ex rel. v. Johnson, 100 *Ill.*, 545.

SUMMARY.

To summerize the points made by us, we will say :

1st. The Supreme Court of the State has decided bonds could not be issued under act of March 7th, 1867, and that

the act of February 26th, 1869, on account of its title was unconstitutional.

2nd. That under acts of March 24th, 1869, bonds could be issued only by the *authorities of said town* that is the board of audit, as a body, but not by the supervisor and clerk, as they were not the authorities, either under the wording of said act or the general township organization law, as decided by said Court.

3rd. That as these bonds contain *no recitals*, and were issued *after* the constitution of 1870 took effect, which prohibited such aid unless they were issued in accordance with a vote of the people, which they were not, they are void, as in such case the burden of proof is on the holder to show *all* the conditions have been *complied* with.

4th. That no act of the supervisor, nor any other person, not even the people in their corporate capacity, after July 2d, 1870, could in any way bind said town, unless it was in *accordance with a vote* of the people of such town under an existing law prior thereto. This not being the case the acts of supervisor, or auditor, or any other person after that time could not in any way bind the municipality.

Schall v. Bowman, 62 *Ill.*, 321.
Richards v. Donagho, 66 *Id.*, 73.
Wright v. Bishop, 88 *Id.*, 303.
People v. Jackson Co., 92 *Ill.*, 451.
Lippencott v. Pana, *Id.* 33 to 35.

5th. As no bonds could be issued under act of 1867, and as the act of March 24th 1869, did not provide for the manner of holding the election the holder must notice the general law for the mode, and would thus be compelled to

notice the statement, and that nothing could be submitted except what was contained therein, and thus know bonds were void.

6th. That by laws of Illinois no interest can be allowed against a municipality unless by express agreement, and coupons after due, if not so expressed, do not draw interest.

This Court has frequently held that all the decisions of the State Courts, if they had been uniform, at the time of the issue of the bonds, were to be considered the law and really forming part of the bond, and of all such the holder was bound to notice, as well as all changes in the Statutes and Constitutions, and if from all of these taken together there was no authority to issue them, they were void. *Ralls Co. v Douglass*, 105, *U. S.*, 131, and authorities there cited, followed in *Green Co., v. Commissioners*, 109, *Id.*, 105.

You have also held that when you have first passed on an act or constitution of a State where the question came up regularly for decision, and had rendered a decision thereon and the same question subsequently came before the State Court for decision, and it had decided otherwise on the same statute or constitution, you would not in order to conform to the decision of the State Court, change your ruling unless convinced it was founded on sound reason. *Burgess v. Seligman*, 107, *U. S.*, 33, and authorities cited. This very clause of the constitution of 1870 was before you in the *Concord case*, 92, *U. S.*, 629, where these same acts were considered and bonds like these to the same rail road company, and you then held, very properly we think, that the proviso did not refer to *donations*, but all donations were by the enacting clause absolutely *prohibited*.

The reasoning in that case is entirely sound, and coincides with all the authorities on constitutional provisions, while the reasoning in the *Pinkney Case*, 74 *Ill.*, 279, is not sound, as it is built on the *intention* of the framers of the article, instead of the *words* used. All constitutions being construed alone from the words used, and not from the intentions of the parties who sat in the convention, as the constitution does not become effective till sanctioned by a vote of the people, and therefore, it must be construed from the language alone.

Can this Court say it is convinced the reasoning in the *Pinkney* case is better on that question than in the *Concord* case, and reverse its own decision on the very identical acts and bonds to same road, as in that case?

But if the Court on that question should conceive its right and duty to follow the rulings of the State Court in that particular, as you have already done in an analagous case from *Gallatin Co.*, in 100 *U. S.*, 48, will you not on the same principle follow the rulings of the State Courts on all the other questions we have referred to, and in which their rulings have at all times been uniform, showing the bonds in this case are void as not being authorized by law? In fact, from all the authorities cited, in *Fairfield v. Gallatin Co.*, 100 *U. S.*, 50, we think you will, and therefore ask said judgment be reversed, and judgment entered for the town for costs.

DOYLE, MORRIS & PIERSON,

Robert Doyle,
of Counsel

Attorneys for Town.

Fairbanks, No. 866 of the present term, and submitted with these cases. The only points of difference are these:

In the Martinton case, the election occurred on June 13, 1868, and is recited on the face of the bonds. In the Sheldon cases, the election occrrued on March 7, 1870, and is *not* recited on the face of the bond.

The acts of February 26, 1869, and March 24, 1869, were passed *after* the election in Martinton, but *before* the election in Sheldon.

In the Martinton case, the acts of March 7, 1867, and February 26, 1869, are shown on the face of the bonds.

In the Sheldon cases, no act is specifically shown on the face of the bonds.

In all three of the cases, however, the three acts of March 7, 1867, February 26, 1869, and March 24, 1869, are accepted and treated as the legislative authority for issuing the bonds—if any or all of them were passed in a constitutional manner.

In the Martinton case, it is conceded that the railroad was in fact constructed through the town, and every condition of the vote complied with, on the part of the railroad company, before the bonds were issued. In the Sheldon cases, the evidence tends to show that the road was *not* built through that town; but the owners of the bonds contend that the terms of the election held in Sheldon did not make it a condition precedent that the road should be built *through* the town, in consideration of the $25,000 voted, but that the only condition precedent was that the town would appropriate a *further* sum to pay for right-of-

way, if the road would run through the town; and that the acts of 1869 granted full power to the town to vote this aid, even if the town had imposed the condition erroneously supposed by Judge BLODGETT, and urged herein so strenuously by counsel; and if the road did not run through the town, still these bonds are valid in the hands of innocent holders, because the act of March 24, 1869, conferred power on all towns within the prescribed limits, although the road might not run through them, to vote aid, and because the supervisor of the town, being its only executive officer, filed with the Auditor of Public Accounts of Illinois a sworn certificate as a basis for registering these bonds, in which he certified that the funding act of April 16, 1869, which provides that the roads must, in fact, be constructed through the town before such bonds are entitled to registration, had been complied with, thereby estopping towns issuing these bonds from setting up as a defense, that the road had not, in fact, been built through the town.

This supervisor's certificate is shown on printed pages 11 and 12, Day record, and pages 17 and 18, Fairbank's record, and are discussed in Judge Blodgett's brief opinion in the Fairbanks case.

The Martinton bonds and coupons were payable in New York.

The Sheldon bonds were payable in Illinois, a difference only pertinent in considering the question of interest on the coupons.

Elections to vote bonds other than that under which these bonds were issued, are disregarded, as notice of such other elections have not, in any legal manner, been brought

to the knowledge of the bondholders. Even if buyers of these bonds had known of the other elections, that knowledge would not have vitiated the bonds, from any authorities I have been able to find.

There being no recital on the face of these Sheldon bonds that a vote was ever taken, we introduced evidence to show that an election was really held on March 7, 1870, at which a majority of legal voters in the town voted in favor of issuing the bonds, and this fact is conceded. Defendants in error insist that they were not any more bound to inquire into the regularity of this election than if it had been recited on the face of the bond. They were only bound to know that an election was held, its date and results.

The election of March 7, 1870, occurred *after* the two acts of 1869 were passed; therefore, the question of the power of the Legislature to pass curative acts does not arise in these cases.

Outside of supervisor's certificate with the State Auditor, shown in the record, the evidence of the election consisted of agreements of counsel and copies from the town records. The purchasers of these bonds were not required to go to the town records to ascertain whether an election had in fact been held. There being no recitals on the face of the bonds, any information advising buyers that a prior popular election before the bonds were issued was sufficient.

POINTS AND AUTHORITIES.

I.

These causes were submitted to the court below for trial, without the intervention of a jury, and judgment entered upon a general finding. (Day Record, printed page 7; Fairbanks Record, printed page 13.)

No exceptions were taken in the progress of the trial to the rulings of the court in admitting or excluding evidence. No question is made to the sufficiency of the pleadings, and no motion was made in arrest of judgment. There is nothing in this record for the Supreme Court to review. The judgment should be affirmed or the writ of error dismissed.

Insurance Co. v. *Folsom*, 18 Wall. 248, and cases cited thereunder.

Cooper, Exr. v. *Omohundro*, 19 Wall. 64.

Crews v. *Brewer*, Ibid. 70.

Ottoe Co. v. *Baldwin*, 111 U. S. 1.

II.

Under the act of March 7, 1867, copied in the record at printed page 17, Day Record, the town of Sheldon, on the line of the Chicago, Danville and Vincennes Railroad, acquired power to *create a debt* by donating aid to that road.

C. D. & V. R. R. et al. v. *Smith*, 62 Ill. 268.

Under the election of March 7, 1870, shown in the bill of exceptions, the town of Sheldon *created a debt* in

favor of the C. D. & V. R. R. Co., by voting $25,000 in aid of the road.

Chiniqui v. *The People, etc.*, 78 Ill. 576.
County of Moultrie v. *Savings Bank*, 92 U. S. 634.

III.

The act of March 7, 1867, not only confers power on plaintiff in error to donate aid to the railroad, but also authorized the town authorities to "*make such provisions "as may be necessary and proper for the prompt payment "of the appropriation under the provisions of this law.*" This conferred ample legislative authority.

By issuing bonds instead of levying an immediate tax to pay the donation can be construed only as an irregular execution of the power contained in the act, and does not vitiate the bonds in the hands of an innocent holder for value, purchased before maturity and without notice.

C. & St. L. R. R. Co. v. *City of Sparta*, 77 Ill. 505.

IV.

Legislative authority to aid a railroad carries with it authority to issue bonds or evidences of indebtedness, to raise money to pay the same.

Seybert v. *City of Pittsburg*, 1 Wall. 272.
Rogers v. *Burlington*, 3 Wall. 666.
Police Jury v. *Britton*, 15 Wall. 572.
Concord v. *Portsmouth Savings Bank*, 92 U. S. 625.
Bonham v. *Needles*, 103 U. S. 650.

V.

Bonds illegally issued may be validated by the Legislature.

New Orleans v. *Clark*, 5 Otto, 653.
Commissioners v. *Thayer*, Ibid.
City v. *Lawson*, 9 Wall 478, 485.
Ritchie v. *Franklin Co.*, 22 Wall. 68.
Beloit v. *Morgan*, 7 Wall. 623.
Cooley Const. Lim. 379, 380.

The Legislature may treat an unauthorized or illegal prior popular vote as an expression of the wishes of the municipality in reference to issuing bonds.

County of Leavenworth v. *Barnes*, 4 Otto, 70.
R. R. Co. v. *County of Ottoe*, 16 Wall. 667.

The acts of February 26, 1869, and March 24, 1869, passed *before* the vote of March 7, 1870, contained ample authority for issuing the bonds, irrespective of the act of March 7, 1867.

St. Joseph Township v. *Rogers*, 16 Wall. 659.
Urbana Cases (decided at October term, A. D. 1882).
Keithsburg v. *Frick*, 34 Ill. 405.
Reed v. *Plattsmouth*, 107 U. S. 568.
Corcgil, et al. v. *Long*, 15 Ill. (5 Pick.) 202.

Those acts not inimical to the Constitution of 1848.

Town of Abington v. *Cabeen*, 106 Ill. 200.
Plummer v. *The People*, 74 Ill. 362.
The People v. *Lowenthal, et al.*, 93 Ill. 205.

Decker v. *Hughes*, 68 Ill. 33.
Larrison, et al., v. *Peoria, Atlanta & D. R. R. Co.*, 77 Ill. 11.
Johnson v. *The People*, 83 Ill. 431.
O'Leary v. *Cook Co.*, 28 Ill. 538.
Binz v. *Weber*, 81 Ill. 288.
Supervisors v. *The People*, 25 Ill. 181.
The People v. *Wright*, 70 Ill. 388.
Belleville R. R. Co. v. *Gregory*, 15 Ill. 20.
City of Ottawa v. *The People*, 60 Ill. 121.
Wade v. *Walnut*, 103 U. S. 683.

A legislative act should not be held unconstitutional except for grave reasons clearly disclosed.

The People v. *Hatch*, 33 Ill. 130.
The People v *Marshall*, 1 Gilm. 672.

VI.

This court is not bound by the late rulings of the State courts on questions involving the validity of municipal bonds, or other commercial paper, where such later rulings are inconsistent with former rulings prior to which the bonds were issued and which became a part of the law of such bonds.

Butz v. *Muscatine*, 8 Wall. 528.
Roberts v. *Bolles*, 11 Otto, 119.
Oates v. *National Bank*, 10 Otto, 246.
Warren Co. v. *Marcy*, 7 Otto, 96.
Venice v. *Murdock*, 2 Otto, 494.
Gelpcke v. *Dubuque*, 1 Wall. 206.
Pine Grove v. *Talcott*, 19 Wall. 666.
Douglas v. *Pike*, 11 Otto, 677.

On implied powers:

Lynd v. *The County*, 16 Wall. 6.
Daniel on Negotiable Notes, § 1,530.
City v. *Commonwealth*, 84 Penn. 82, 500.
Police v. *Britton*, 15 Wall. 578.
Mayor v. *Ray*, 19 Wall. 468.
Dillon on Munic. Corp. § 10.
City v. *Corwith*, 48 Ill. 423.
Committee v. *Reinboth*, 5 Wright (Pa.), 502.
County v. *Brooks*, 111 U. S. 405.

VII.

ESTOPPEL.

The town paid the earlier maturing interest coupons cut from these bonds and is now estopped from denying their validity.

Keithsburg v. *Frick*, 34 Ill. 405.
Knox Co. v. *Aspinwall*, 21 How. 539.
Bissell v. *Jeffersonville*, 24 How. 287.
Moran v. *Commissioners*, 2 Black, 732.
Mercer Co. v. *Hackett*, 1 Wall. 83.
Van Northrup v. *Madison City*, 1 Wall. 291.
Stephenson v. *Schenck*, 5 Wall. 772.
Pendleton Co. v. *Avery*, 13 Wall. 103.
Bonham v. *Needles*, 103 U. S. 650.
Concord v. *Savings Bank*, 92 U. S. 625.

VIII.

INTEREST.

Interest on bonds and coupons were properly allowed.

Wade v. *Walnut*, 103 U. S. 683.
Ohio v. *Frank*, 103 U. S. 697.
Cromwell v. *County of Sac*, 96 U. S. 55.
Aurora City v. *West*, 7 Wall. 104.
Gelpcke v. *City of Dubuque*, 1 Wall., 206.
Hollingsworth v. *City of Detroit*, 3 McLean, 472.
Dunlap v. *Wiseman*, 2 Disney (Ohio), 398.
Town of Genoa v. *Woodruff et al.* 92 U. S. 502.
Hurd's Revision of 1877, chap. 74, sec. 2, p. 589.
Daniels v. *Osborne et al.* 75 Ill. 615.
Dobbins et al v. *Higgins et al.* 78 N. Y. 440.
Steavens v. *Sweet*, Ibid. 446.
Chapman v. *Bush*, 77 Ill. 337.
Edgeman v. *Ashelby*, 76 Ill. 162.
Case v. *Cocker*, Ibid 484.
Harper v. *Ely*, 70 Ill. 586.

ARGUMENT.

Counsel for the Town of Sheldon, at page 46 of his argument in the Day case, and page 52 in his argument in the Fairbanks case, expresses an apprehension that this court may construe the opinion of the court below in the Fairbanks case as a finding of facts, and argues that

such opinion is *not* a special finding of facts. Counsel is wholly correct.

The opinion was not intended as a finding of facts, and could not possibly be so construed.

In both cases, as in the Martinton case, the finding was *general*, and neither one of these records presents any questions of law for the Supreme Court to pass upon. The bills of exceptions bring up nothing for this court to inquire into, as both cases were tried by the court without the intervention of a jury. This point is discussed at some length in *Fairbanks* v. *Martinton*—case No. 866 of the present term—and further notice of it is omitted here. Authorities to sustain this position are found in the brief.

The acts of February 26, 1859, and of March 24, 1869, as well as the act of March 7, 1867, were in full force and effect on March 7, 1870, when the people of the town of Sheldon voted to donate $25,000 towards the construction of the Chicago, Danville and Vincennes Railroad. Therefore the first two are not open to any *alleged* infirmity of being curative or legalizing acts.

The bonds on their face contain no recital of any authority of law, or vote of the people, as justification for their issue. Owners of these bonds, when suing for their collection, are bound to show adequate legislative authority, and also a vote of the people at a time when they were not prohibited by the laws of Illinois from donating aid to railways, in order to maintain their legality.

By agreement in these cases, the three acts above mentioned, with the funding act of April 16, 1869, are

conceded as constituting the legislative authority and the certified copies of the election notice, record of the result of the election of March 7, 1870, acceptance of the railroad company on June 20, 1870, and sworn certificate of the supervisor filed with the State Auditor as constituting evidence of the fact that an election was held on March 7, 1870, and are relied on by Day and Fairbanks as establishing that fact, which is also conceded by the town.

Counsel for the town argue that there existed no legislative authority for any town along the line of the road, and *through* which the road was not in fact constructed, to vote aid; that the vote in Sheldon was in fact conditioned upon the construction of the road *through* the town, and that purchasers of these bonds were charged with knowing whether or not these conditions were fulfilled.

The act of March 24, 1869, contains ample legislative authority, as will be seen by section 2 of that act, on page 20 of the Day record, or page 26 of the Fairbanks record, for donating aid to this road, it being on the line of the road and within twenty miles of the Indiana line, as limited by the act of March 7, 1857. But suppose this act of March 24, 1869, had not been passed, the supervisor filed in the office of the Auditor of Public Accounts, when the bonds were registered, a certificate, sworn to, in which was an affirmation that the funding act of April 16, 1869, which provides that the road must in fact be built through the town proposing to donate aid, before the bonds issued to pay the donation could be registered, and this fact should be evidenced by the supervisor's certificate, had been fully complied with. This auditor's cer-

tificate, on the back of each of the bonds in controversy, is an authentication that the act of April 16, 1869, had been fulfilled, and buyers were not bound to look further. This proposition does not seem to be seriously controverted, and it cannot be, as the force and effect of such registration has been more than once passed upon by this court.

Coming to the second branch, it is not true that the donation of this sum of $25,000, of which the bonds in controversy constitute a part, was voted on condition that the road should be built *through* the town. The court below unwittingly fell into this error of fact, and counsel elaborates the statement at great length in his argument.

The notice of the election, on printed page 13 of the Day record, or page 19 Fairbanks record, is as clear and simple as words could make it. It is not open for interpretation. The purport of the call was to vote, first, $25,000, as unconditional aid to the road; and, second, "for the purpose of making the appropriation of a suffi-"cient amount, under the direction of the town board of "said town, to procure and furnish to said company the "right of way for said road through said township of "Sheldon, said appropriation to be made only upon con-"dition that the said Chicago, Danville and Vincennes "Railroad be located and constructed and their trains "running thereon, from the city of Chicago and into the "town plat of the village of Sheldon," etc.

The record of the election which follows this election notice, confirms this theory that two appropriations were contemplated, to wit, one, wholly unconditioned, of $25,000, to have the road built through Iroquois County, and a *further* sum to be disbursed by the town board in

procuring the right of way *through* the town and village of Sheldon, if the projectors of the road should determine to pass through that town and village.

Bnt suppose the donation of $25,000 had been on condition that the road should be constructed *through* the town and village of Sheldon, the fact that the road was not constructed through the town and village cannot be set up as a defense in these suits. The town would be concluded by the act of its officers in executing the bonds and providing for their registry, by which authentication the town was enabled to sell the bonds whereby to procure money to pay its donation, and so the court below held.

The third branch need not be argued. If the acts shown constitute legislative authority, and if there was in fact a vote of the people endorsing the donation, then defendants in error, as purchasers for value, before maturity and in good faith, will be protected, and they are not charged with knowing whether these minor conditions were complied with or not. This doctrine has been enunciated time and again, and is not open for discussion in this court, as I take it.

As said in my brief in the Martinton case, the validity of these bonds may be considered as settled in *Concord* v. *Savings Bank*, 2 Otto, 629, the ground on which that case was reversed having been subsequently, in *Fairfield* v. *County of Gallatin*, 100 U. S. 47, overruled.

But when the court said: "A popular election having been held, and a majority of votes cast in favor of

"appropriation," it may be conceded that payment of the "appropriation could lawfully have been made in town "bonds, instead of money, if the donation itself was au- "thorized," it was not altogether in the line of the discussion in which the court was engaged; and we do not ask that the court be bound by it—still the announcement conformed with the current of the decisions of the court in similar cases.

I am entirely unable to comprehend why counsel has copied so extensively from the statutes of Illinois relative to the methods of holding elections and the township organization law. If these bondholders were bound to know that the election was called and conducted according to the provisions of the statute—which they were not—I do not see any material deviation from the statutory requirements in calling and holding the election of March 7, 1870, in the town of Sheldon. The third section of the act of March 24, 1869, gives some general directions about calling and holding elections, and these directions seem to have been carried out. But purchasers of this species of commercial paper are not charged with inquiring into such matters, and their consideration here is irrelevant.

Touching the constitutionality of these acts of 1869, what was said in *Fairbanks* v. *Martinton* is pertinent in these cases, and it would be useless to repeat the argument here.

Counsel, on pages 33, 34 and 35 of his Day brief, concedes that the act of March 24, 1869, appertains to these bonds, if an election is proven; but affirms that

purchasers of bonds were charged with finding out whether the election was called and held as provided by law, and he seeks to draw some distinction between a town or village acting under a charter, and a township acting under township organization. In Illinois the terms "town" and "township" are interchangeable. For purposes of conveyancing, the political divisions are called townships; "but when Iroquois County adopted township "organization," the corporate name of plaintiff in error became "The Town of Sheldon."

Rev. Stat. 1877, p. 1011, § 38.
Ibid. " " 1019, art. 11.

Throughout all our laws, public and private, the words are used interchangeably; and these bonds, on their face, are designated "township" bonds, when, more strictly speaking, they are "town" bonds, which distinction is noted in the declaration.

The purport of the argument seems to be that there was some irregularity in the conduct of the election, but from authorities cited in the brief, it is clear that holders of this class of securities are not required to look into the details of the election. In these suits, the certificate filed with the State Auditor before registry avers that the election was held, and this would have been sufficient to bind the town, as the act was done by an officer of the town, in the line of his duty, even if the certificate had been false in that regard, but being true, the town is concluded, and a recital of the fact on the face of the bond was not necessary.